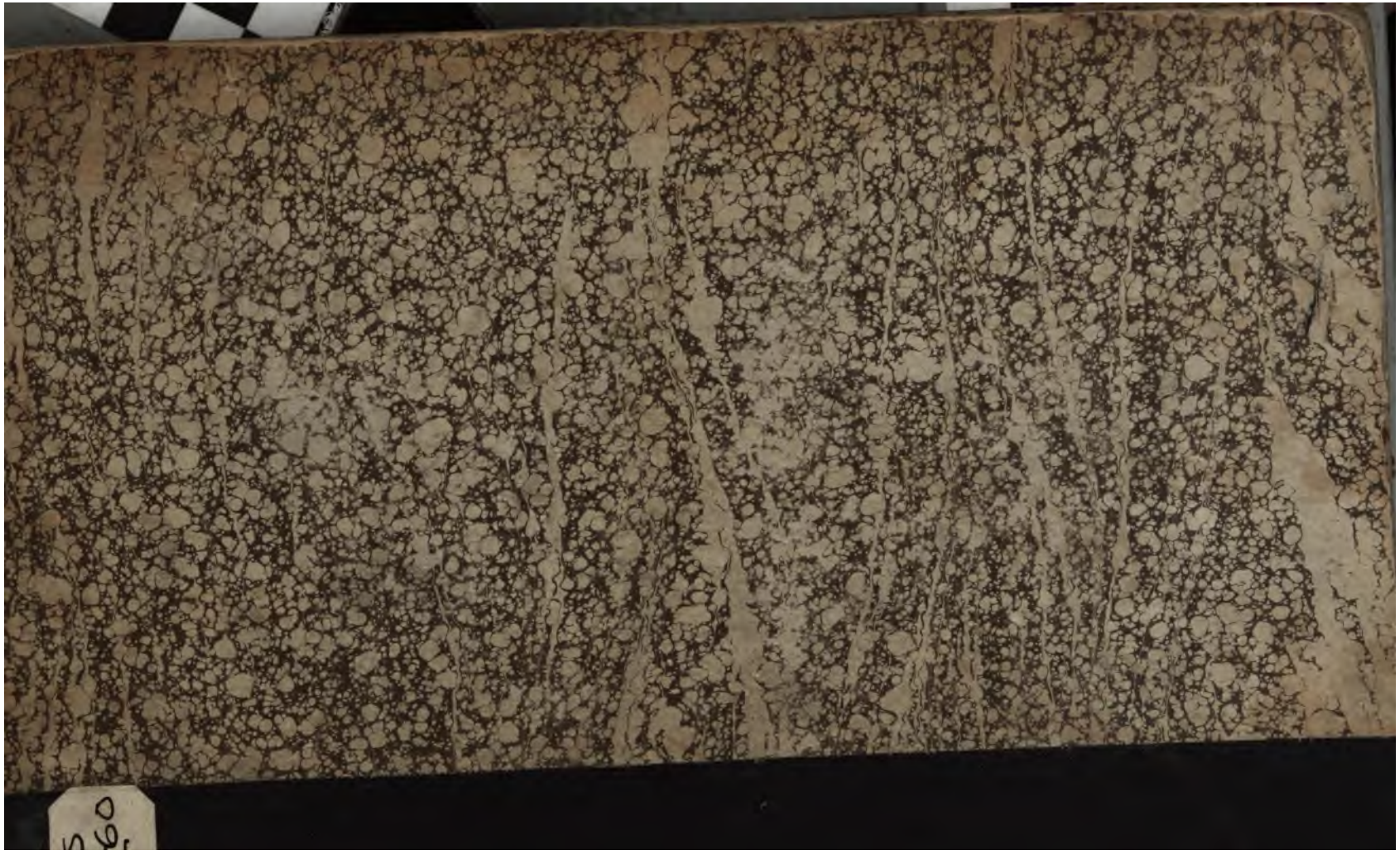

MR. HOPKINS' ADDRESS

BEFORE THE

CUMBERLAND BAR.

AN

ADDRESS

TO THE

MEMBERS OF THE CUMBERLAND BAR,

DELIVERED DURING THE

SITTING OF THE COURT OF COMMON PLEAS,

AT PORTLAND, JUNE TERM, 1833.

BY JAMES D. HOPKINS,
COUNSELLOR AT LAW.

PUBLISHED AT THE REQUEST OF THE BAR.

PORTLAND:
PRINTED BY CHARLES DAY AND CO.
1833.

CUMBERLAND ss....*Court of Common Pleas, June Term*, 1833.

At a meeting of the members of the Cumberland Bar on the eighth day of the Term, NICHOLAS EMERY, Esq. presiding in the absence of the President, and WILLIAM H. CODMAN, Secretary pro tem.

On motion of SAMUEL FESSENDEN, Esq. it was unanimously

Voted, That the members of the Cumberland Bar return their thanks to their President for his interesting address before the Bar at the present Term of the Court of Common Pleas.

On motion of Mr. DAVEIS,

Voted, That a committee be appointed and authorised to request a copy of Mr. HOPKINS' address for publication, and to make the necessary and suitable arrangements for that purpose.

Voted, That Messrs. NICHOLAS EMERY, STEPHEN LONGFELLOW, JOSEPH ADAMS and WILLIAM WILLIS constitute said committee.

Attest, WM. H. CODMAN, *Sec'ry pro tem.*

Copy from the records,

Attest, WM. H. CODMAN.

ADDRESS.

GENTLEMEN:

THE best consideration I could give to the vote of the Cumberland Bar, in obedience to which I appear before you, has resulted in a belief, that I could not better discharge the duty assigned me than by exhibiting a view of the jurisprudence of Maine, from its origin to the present time, as the records of our courts disclose it. But the full accomplishment of this would be a very laborious undertaking, and the limits of a single address, even extended far beyond all precedent, are obviously inadequate. You cannot therefore expect, neither shall I attempt any thing more than a cursory outline. Having devoted a few days to an inspection of the records in the county of York, with this object in view, I have made numerous extracts, in order to exhibit the character and the proceedings of our ancient courts; but although these might afford much amusement in a social circle, they are too ludicrous to be detailed in an address to this audience; and yet I must introduce some of them as general specimens, because it would be impossible to characterize faithfully the ancient jurisprudence of Maine by a descriptive essay; inasmuch as it is in some respects *sui generis*; and although the antiquities of Massachusetts and Connecticut may afford resemblances to some of its peculiarities, and those of New-Hampshire more; yet, in other respects, we seem to stand alone; and but for these partial resemblances, we might well enough adopt a celebrated hibernianism, and say

"*Nought* but *itself* can be *its* parallel."

The council of Plymouth in 1620, were invested with powers to establish government, in such forms as they saw fit, provided that their laws and regulations should not be contrary to the laws of the

parent country, nor infringe the royal prerogatives. Sir Ferdinando Gorges, the lord proprietor of Maine, held his patent under the council of Plymouth in 1622, with all the powers with which they were invested. What sort of government Sir Ferdinando might have been able to establish, and to preserve, among his followers and their associates, if his fortunes had not fallen with the royal house of Stuart, and his early death had not prevented, can only be a subject of conjecture. He manifested a deep interest in the welfare of the colony, and left written instructions for the guidance and direction of his followers, which, however, were not very well observed when the broad atlantic stretched itself between him and the objects of his solicitude. It is generally considered, that Gorges had formed a splendid plan, "and that little was attempted, and nothing done in pursuance of it." Of those whom he left in "the new world," some, from a spirit of liberty, which grew up when there was no power to co-erce or check them; and others, from an incapacity to comprehend the objects of their absent patron, soon began to hold themselves acquitted of all obligation to comply with the conditions by which they held their lands, and to believe that they had a right to establish a government for themselves. They did not, however, wholly disregard the instructions of Gorges, and their simple laws appear to have been as consonant to the laws of the parent country as could have been expected from their very slight acquaintance with those laws, and their limited means of acquiring the requisite knowledge. The assistants, too, for a considerable time, were of the appointment of Gorges, (and by these the courts were held) and a representative of Gorges himself exercised subordinate authority instead of governor. These were not altogether inefficient checks against the errors of ignorance, and the obstinacy of insubordination; and in the establishment of such provincial laws and regulations as local and peculiar circumstances seemed to require, we have reason to believe that, in the language of their ancient oath of office, they acted "faithfully and impartially, according to the best of their cunning."

As in Massachusetts, the governor and assistants exercised legislative, judicial and executive authority, and "inferred from their colonial charter whatever powers the exigences of their community required," so in Maine, the *locum tenens* of the governor, and the

council of assistants, exercised similar authority, and considered all the powers they deemed requisite as charter rights.

It is said that, in Massachusetts, "the clergy and the elders were the expounders of the law in all new exigencies," and that "the law was frequently made for the occasion in which it was applied." The latter sometimes happened in Maine; but in respect to the former, there was manifestly a different state of things eastward of the Piscataqua, which continued several years after Massachusetts stretched her claim of jurisdiction over the territory, which now constitutes the State of Maine.

The first settlers in Massachusetts and Connecticut were almost universally persons, who had fled from what they considered pernicious errors in doctrine, and from a tyrannical discipline, and the intolerance at that time existing in the church of England. They sought a peaceful asylum, where they could exercise, unmolested, their religious rights, and enjoy, in perfect freedom, the privilege of worshiping God, according to the dictates of their consciences, and the doctrines they had embraced. Hence they sought sedulously to avoid whatever they feared would endanger these rights; they believed too, that their case bore an analogy to that of the descendants of Israel, when they fled from Egyptian tyranny; a keen sense of the oppressions they had suffered deepened this sentiment; their enthusiasm led them to believe the analogy complete, and that the parallel would "run upon all fours."

Piously believing that the bible was the only safe guide and instructor upon every subject whatever, secular as well as sacred; and identifying their condition with that of the Israelites, who had a government dictated by divine authority, they generally deemed it an imperative duty to adopt the same government, with the exception only of the ritual and the ceremonial laws, which the christian dispensation had abrogated;—and they considered this their only security against the evils from which they had fled.

Massachusetts had her Cotton, a man of eminent piety and learning, who could not but have known, that the common law was much indebted to the Mosaic institutions. It was manifest both in its civil and criminal provisions;—in its list of crimes, in some important rules of evidence, and in many other respects; particularly the dis-

tinctions in homicide, which have ever since existed, and will exist forever; in the distinction between burglary and less criminal housebreaking, and in other matters which might be enumerated.

The Rev. Mr. Cotton's enthusiasm led him much farther in adopting the rules of the Mosaic code than the Common Law had gone; for he seemed to consider, that every Levitical precept, except the ritual and the ceremonial, ought to be the express subject of a colonial statute or regulation.

This important matter was submitted by the infant government to Mr. Cotton's consideration, and he reported a code of laws for the colony, according to his own views, in which he was seconded by many. But more practical men, notwithstanding the great veneration in which Mr. Cotton was justly held, were able, by their influence, to set limits to this pious enthusiasm. Believing, as they did, that although the Mosaic code was of divine institution; yet it did not certainly follow, that regulations, which suited the state and condition of the Israelites, must, by inevitable consequence, be equally adapted to that of the Massachusetts colonists.

The whole of Mr. Cotton's code was not adopted, yet several colonial laws were passed, as reported by him;—many of which, however, were abrogated, or considered obsolete at the time of the adoption of the Massachusetts constitution. Those which continued latest were the primogeniture law, the provision for three-fold damages in larceny (in which however there was a little variation from the scripture authority) and the provision for selling the convicted thief in case the three-fold damages were not paid in money. And these, too, have all been repealed within the recollection of some of my audience.

But the first settlers in Maine and New-Hampshire, the followers of Gorges, and of Mason, had no such reasons for emigrating from their native land. They did not fly from persecution; but were voluntary adventurers, seeking gain by such trade and employments as the new world might afford. They were contented with the laws of their native land, as far as they understood them; and therefore did not seek for new provisions, civil or criminal, nor for any new or altered ecclesiastical regulations, except so far as local circumstances might render necessary; and even in such cases, they were grossly

ignorant of the laws of England, and had no wish to contravene them. They felt themselves more closely bound to those laws than their puritan neighbours ; and being episcopalians, they had suffered no persecutions, and sought no innovations in ecclesiastical affairs. Moreover they were zealous royalists, while their neighbours were secretly attached to the interests of Cromwell. It was during the reign of republicanism in England, that Massachusetts extended her jurisdiction over Maine ; and although for several years after, Maine still continued under the government of her own regulations ; yet at length she became fully subject to the laws of Massachusetts, of which she now constituted a part.

The period which my subject embraces might be divided historically, or politically, into distinct parts. 1st. From the beginning of the settlement to the time when Maine submitted to the claims of Massachusetts, which, except as to Falmouth and Scarborough, was in 1653, and in these two settlements in 1658. 2d. From thence to the time when, under President Danforth, a more regular government commenced—this was in 1680. 3d. From the latter period to the time when Maine, before constituting only one county, viz. York, was divided into three, viz. York, Cumberland and Lincoln, which was in 1760; from which time all my observations will be confined to Cumberland, which might make a fourth division ; but as neither of the three first marks any characteristic era in the history of our jurisprudence, such a division would be unimportant to my subject, and these periods will not be distinctly noticed.

Another thing ought to be mentioned. The original patent to Gorges and Mason embraced New-Hampshire and Maine. Mason and Gorges made partition, under which the former held New-Hampshire, and the latter Maine, in severalty. Courts were held in both provinces before the division was made. There is a record of a court in Saco, in 1636, from which we learn, and other records support the fact, that the people settled in different places, and too remote from each other conveniently to attend courts at a distance, entered into combinations (so they were called) to have all their legal concerns settled in their own neighbourhood by the councillors or assistants who dwelt among them. They resembled poll parishes, where individuals fall off from the original society, preferring to

manage their own affairs among themselves. It no where appears that this arose from any spirit of disaffection to the government. It was not full blooded nullification ; but seems to have grown out of the inconveniences they must suffer by attending courts far from home ; and probably it was not done without a pretty general acquiescence. In one instance, at least, this was done under the authority of the General Court, and probably it is not a solitary instance.[1]

[1]The record of a Court at Saco in 1640, states that nine inhabitants (who are named) of Piscataway, made their appearance at this Court, and that fifteen (also named) made default. And "the inhabitants of Piscataway petitioned to be eased of the charge of attending at this court for justice, and prayed that they might have leave to keep petty courts within their plantation. Ordered, that for the present they have leave to repair for justice here, or at the court at Agamenticus, only to make their appearance here every year on the 25th June till further order be taken."

The following record, of a similar character, from Agamenticus, which claimed certain exclusive charter privileges as a city, evidently exhibits a higher order of intellect, as well as professional caution and skill. It is called a copy of deputation of the inhabitants of Agamenticus :

"Whereas we the inhabitants of Agamenticus have bin summoned by Richard Vines Esq. Steward General to Sir Ferdinando Gorges, Knight Lord Proprietor of the province of Mayne to appear at a General Court to be holden at Saco on the 25th June next for the settling of government within said province ;—now we the inhabitants of Agamenticus aforesaid whose names are subscribed have deputed Mr. Edward Jonson, John Baker, George Puddington, and Bartholomew Barret, to appear for us at the said courte, and do hereby give unto the said parties full power and authority for us, and in our names to treate and conclude of any thing which in their discretion shall be for the good and benefit of this plantation ; provided always without impeachment of any priveleges heretofore granted unto us by patent or otherwise. In witness whereof we the inhabitants aforesaid have hereunto subscribed our names the 19th day of June 1640. Signed John Gooch, Henry Linn, Ralph Bleasdall, *in the name and by the power of the rest of the inhabitants.*

Protest in behalf of the inhabitants of Agamenticus.

"Whereas divers priveleges have heretofore bin granted to the pattentees and inhabitants of Agamenticus, as by several patents doth and may appeare, we whose names are here subscribed, being deputed for, and in behalfe of the said inhabitants doe, in behalf of ourselves, and those we are deputed for, protest as followeth, that our appearance at this court shall be no prejudice to any grants or priveleges which we now enjoy or ought to enjoy by virtue of said patents, or otherwise :—and that whatsoever we shall doe, or transact in this court shall be saving this protestation ;—notwithstanding, we doe humbly acknowledge His Majesty's grant of the provincial patent to Sir Ferdinando Gorges, and humbly submit ourselves thereunto so farre as by law wee are bound. Wee also desire that a coppie of this protestation may be taken to some notary, or other officer of this court here to be recorded. Signed Edward Johnson, George Puddington, John Baker, Bartholomew Barret, *Deputies for the inhabitants of Agamenticus.*

"It was ordered at this court by Richard Vines, Richard Bonython, Henry Joslyn and Edward Godfrey esquires, Counsellors for this province, that the government now established at Agamenticus shall soe remain until such time as the said counsellors have certified the Lord of this province thereof, and heard again from him concerning his further pleasure therein."

We may infer too, from different parts of our ancient records, that frequent alterations were made similar to those which are familiar in modern times, where individuals are set off from one parish or town, and annexed to another ;[1] but nothing appears to exhibit any material, or characteristic difference in the proceedings of their several courts, at least of those which remain.

The caption of the record of the Saco court in 1640, calls it "The First Great and General Court," although there are records of courts four years older ; but this court seems to have been so denominated, because it was the first under the charter, and probably the first term which was held after the judges received their commissions.

These preliminary observations might be pursued farther ; but I must hasten to my subject, which I fear I shall not be able to condense within the limits which your patience will prescribe.

Almost all the old records prompt us to denominate our ancient jurisprudence semi-barbarous. They do not present the image of a magnificent, but mouldering edifice, tottering under the ravages of time, and though crumbling into ruin, still venerable in decay ;— but they suggest the idea of a few fragments of some noble and lofty structure, mingled together in strange confusion, with an indescriptible mass of heterogeneous materials, awkwardly united, without regard to magnificence, order or design, and with an utter ignorance of the requisites to strength or utility, beauty or proportion.

Among our first settlers, we cannot name more than one man of legal education, and his residence in this country was for a period of less than three years ; yet the early records discover in a few instances, manifest traces of sound sense, and even of learning ; but they are far from being of frequent occurrence ; and they produce such an effect as strikes the mind upon the contemplation of some wonder, which an age only may be expected to bring forth ; but they do occur here and there ; and sometimes more than one case at the same term exhibits a character of learning and intelligence,

[1] This was done for other purposes also. A record, whose date I have not noted, declares that "Mr. Wheelwright's farm and Cape Nuttacke are joined together as a village of this province, and have liberty annually to elect and send a deputy for themselves."

forming so striking a contrast to the rest, that we are tempted to doubt the evidence of our senses, or to deny that legal barbarism could have existed where very little else appeared.

The judicial affairs were conducted by the councillors of the Lord Proprietor; and these, with the freeholders, or their elected deputies, exercised legislative powers. At stated periods the Great and General Court (as it was styled) settled controversies with individuals, and determined upon charges of criminal offences, and in all things now cognizable by our Courts of Probate; and, at the same time, with the aid of the free-holders, officiated in all legislative affairs. They sometimes exercised an authority in matters of ecclesiastical censure or regulation. This however was not frequent, and the instances seem to stamp it with the character of patriarchal superintendence. It was much more frequent among their neighbours of Massachusetts, and of a very different character. Religious intollerance never existed among the first settlers of Maine.

The same records exhibit their proceedings in all these multifarious concerns, without discrimination, order or method. We may read, in the same page, of civil actions, and the brief proceedings therein; and immediately following, an order to the inhabitants of some settlement to make a collection on the next Lord's day for the relief of some poor woman, whom Providence had afflicted with lameness in her old age;—of the censure passed upon another woman for questioning the soundness in doctrine of some preacher;—next perhaps, is an enquiry into the orthodoxy of another preacher, or a censure upon some expression in his discourse; while perhaps the next is an order relative to some road or bridge, or a license to retail strong liquors, or to keep an ordinary; probably the next is some county (then the whole State) tax; and following these, the proceedings of the grand jury, with a brevity we should call peculiarly their own, were not the proceedings of the court thereon a close imitation. All this, probably, was well enough understood by them at the time, and perhaps remembered for a few weeks, or months; but if not, they must often have been puzzled to determine what questions these records purported to have settled, and what facts they might be supposed to have ascertained. Their records could afford little or no security to parties whose civil controversies had been

litigated, or who had been acquitted or convicted in a criminal charge ;—records, to whose obscurities the wild and tangled forests, which surrounded them presented no unfit emblem. This is not carricature. It is faithful to truth. It applies however to the obscure and uncertain parts of the records ; but these constitute a very large portion of them ;—not all, for here and there we discover a gleam of intelligence amidst so much darkness and confusion ; or, to pursue the metaphor, an opening in the woods, letting in more light, and affording a clearer prospect.

Many of these ancient records are lost ; and of those that remain it is not easy to ascertain the dates of some. Of the records of the courts of Lygonia, an old province, bounded by Cape Porpus and Cape-Elizabeth, and extending 40 miles into the interior, I believe only three fragments remain ; and there remain only fragments of some other records. These circumstances, and the fact that the ancient chirography of many is very difficult to decypher, cannot but excite our regret that the legislature has not considered it expedient to cause an authentic copy to be made of all that now remain, in imitation of the provident example Massachusetts has set us in respect to the ancient records of Plymouth colony. Our records are, within sixteen years, as ancient as theirs ;—they ought to be,—they are,—as valuable, as interesting ; and surely it is not for the honor of the State that they should remain in the situation they are in ;—many of them more obscure than if they were written in a dead language, while from the frail texture of much of the paper, and the bad quality of the ink, they are so dilapidated already (and cannot but be growing worse) that they will soon be "in no language at all ;" and unless something is done to rescue them from oblivion, the memorials of our fathers and predecessors will soon follow them into the land of forgetfulness. But this is departing from my subject.

I have stated that I shall exhibit a specimen of the records. The first court I have ascertained, was held at Saco, at the house of Capt. Richard Bonython, on 25th March 1636. Present, Capt. Richard Bonython, Capt. William Gorges, Capt. Tho. Camoke, Mr. Henry Josline gent. Mr. Thomas Purchase, Mr. Edward Godfrey and Mr. Thomas Lewis. The first record is as follows :

"There was this day presented, by Mr. Theopilas Davis, officer for the place, John Wotton, for being drunke, and giving ill tearmes to the officer."

The mode of punishment for this offence was dictated by the wants of the new court. The only record of trial, conviction and sentence is in these words :

"John Wotton is, by order of court, to macke a payr of stockes, by the last of April, or to pay 40*s*. in money. Also he is fined 5*s*. 8*d*. for being drunke.

John Bonython for incontinency with Anne——is fined 40*s*. and Anne 20*s*. he to keep the child.

Mr. Wm. Frost is fined, by order of court, on the return of an officer, for an uproar in the night 30*s*.

On the petition of Mr. Godfrey, order is given to the officer of Agamenticus to appraise goods of Mr. Frost for £19. 3. 8. damages. The execution £20. 13. 6. And order given to the officer to distrayne, and those that do not, or have not payd what they be assessed to be distrayed," &c.

This last, and some other items evidently imply a former court ; but I have not been able to find its record. In one case the court ordered a diminution of damages found by the verdict of a jury. The record is as follows :

" March 28, 1636. It is this present day ordered by the court, in the case between Martin Royall plaintive and George Cleaves defendant, that in which the jury have found £11. 7. 6. due to Mr. Royall, and it appeareth that there was six weeks, and other small reckonings omitted, which do amount to £2. 8. 10. which being deducted there will be due £8. 18. 8. from Mr. Cleeves to Royall, within 15 days, at Mr. Narius Hawkins' house in Richmond's island, under the penalty of six lbs. more for the non-payment thereof. It is further ordered, for the some of 45*s*. Cleeves is to have it of Peter's wages, and to have respite till the 23d of Febr'y for so (much ?) at present." This order is subscribed by all the court—as is done in some other cases.

" Mr. Thomas Williams is, by verdict of a jury, to pay unto John Richmonds £6. 10. for two barrels of biefe.

Debts due to Mr. Trelawny in these parts, to be paid unto George Hinkford, for Capt. Thomas Babb.

James Cole is to pay the Constable 20*s*. for his paynes in going to Casco.

Arthur Brown and Arthur Macworth are empowered by the court to macke John Cousins give satisfaction to an indian for wrong done him."

A record in 1640 is more eloquent than was usual at this period.

" We that are of the Great Inquest, do present to this court the grievances of ourselves, and the people in general of this province, or the major part thereof, the common crimes and injurious dealings of some inhabitants of this province, who have, and do, practice contrary to the peace of our sovereign

Lord the King, and contrary to the welfare of this Commonwealth, as exactions, extortions, regrating, forestalling, and other unjust practices as followeth.

Imprimis—we do present Mr. John Winter of Richmond's island, for that Mr. Tho. Wise of Casco, hath declared upon his oath, that he paid unto Mr. John Winter a noble for a gallon of *aqua vitæ*, about two months since, and further he declareth that he hath credibly heard it reported, that the said Mr. Winter bought of Mr. George Luxton, when he was last in Casco bay, a hogshead of *aqua vitæ* for £7. starling about nine months since. Mr. John Bowles hath declared upon his oath, that about 8 months since he bought of Mr. John Winter six quarts of aqua vitæ at 20 pence the quart. He further declareth that he paid him for commodoties, bought about the same time, six pounds of bever at 6*s*. the pound, which he himself took at 8*s*. the pound."

Then follow several other charges or specifications of like character against Winter.

The record proceeds :—"We the greate enquest, do present Mr. James Treeworgy, having been one of our association, for revealing the secrets of us unto the delinquent, Mr. John Winter, as appeareth by that which hath been heard by Mr. Geo. Frost, being one of this jury, as he declareth, that he, seeing Mr. Treeworgy in private conversation with Mr. Winter, heard him speake these words, that whereas the said Treeworgy had been absent from the jury, and upon his coming to them was informed by them of what had formerly proceeded, and conceiving that they endeavored to prevent extortions, and other abuses, said that it was his opinion that every man might make the most of his commodities, which he told Mr. Winter was the cause of his dismission ; which was nothing so ; for the jury was rather desirous to have a more able and sufficient man in his stead, for that he had absented himself long from us ; and when he came, we conceived him to be overcome with drink, as having been informed that he had been at the house of William Scadlocke drinking of wine.

Arthur Macworth senior, and one of the greate enquest, declareth to us, that James Cole of Casco is an abusive and suspected person, and always hath been so reputed ; and farther declareth, that he, by reason of his former, and still irregular living, will be injurious to this complainant, his family and goods, except this court shall be pleased to banish him from this province, or otherwise bridle his inordinate course of life, by a due course of law.

The record further states, that "Mr. James Treeworgy presented by the greate enquest, for some abuses, as by the presentment appeareth, was fined by the court 20*s*. which upon petition was remitted."

Winter was summoned to appear and answer at the next court. I was not so particular in my examination as to ascertain what, or whether any, further proceedings were had upon the formidable charges against him. I believe there were none ; for had there been

any, I think I should have noticed them; and such seems to have been the fate of many ancient presentments.

"William Seavy and Steven Crafford were presented for pulling down some fish flakes on the Isles of Shoals, to the detriment of such fishermen as might go there again, and to the damage of such as might deal in fishing affairs"—and the Grand Jury 'desired that it might be rectified.'

The record proceeds:—William Seavy and Steven Crafford, presented by the greate enquest, as by the presentment appeareth are, by a warrant of this court directed to Mr. Thomas Wannerton (he was the complainant) to be warned not to offend any more in that kind, and upon further notice given to the court concerning the premises, to be fined for this offense."

I believe there are not more than two or three examples of so much prolixity in presentments for more than a hundred years. During all that time the presentments were characterized by remarkable brevity. I give a specimen.

"We present John Diamond and Jane Andrews for suspicion of incontinency. John Diamond is fined 40*s.* and an act of separation is mayd, that John Diamond and Jane Andrews are not to keep company with one another.

We present John Bentley for abusing authority, in attacking a man with a warrant when he had none. Acquitted.

We present Goody Mendum for saying to Thomas Gullison and John Daniel, submit ye devils. Fined 2*s.* 6*d.* for swearing.

We do present Thomas How for selling liquor at the Isle of Shoals, after he was forbidden, whereby come many abuses. Thomas How fined according to order in that case provided.

We present Goody Mendum for cursing, and saying the devil take Mr. Gullison and his wife. Goody Mendum fined £9.

Thomas Gayle bound to his good behavior for striking Ellingham, to the next county court. The bond broken before Edward Risworth and Mr. Nicholas Shapleigh in cursing the town. For cursing 10*s.* and for breach of his bond £50. and paying 2*s.* 6*d.* discharged.

We present Christina Ellingham for a common fame of having too husbands.

We present Joanna Andrews, the wife of John Andrews for taking asseverations, as namely, to wish the earth might swallow her up if she had these goods; and afterwards confessed shee had them. Fined 10*s.* for cursing herself; 10*s.* for telling a ly—paying the officers fees 5*s.*

We present Jonathan Davis for affronting the court by giving unseemly speeches with his hat on. Discharged with an admonition, paying 5*s.*

We present Robert Colcord for denying the legality of the court, in saying that the court did not sit according to law.

We present Mary Chillson for being in drink and for drinking a health. Fined 5*s.* and to pay Marshals fees 2*s.* 6*d.*

In one case a man was charged with adultery with a certain woman named, and sentenced to pay a fine of £20 and the woman, although neither charged nor tried, was also sentenced (the record says) censured by this court, that six weeks after she is delivered of child, she shall stand in a white sheet, publiquely in the congregation at Agamenticus, two several Sabbath dayes, and likewise one day at this General Court, when she shall be thereunto called by the counsellors of this province, according to His Majesty's laws in that case provided.[1]

Another record states, that 'Mr. Norman did acknowledge that he had done Margery Randall much wrong, in taking her to his wife; as he himself confesseth that he never had any legal divorce from his wife that lived in England, as appears by the evidence of Miss Mendum and Samuel Staple. It is therefore considered by this court, that the said Margery Randall shall henceforth have her divorce, and is now, by virtue thereof clearly freed from said Norman. And whereas it appeareth, that William Norman hath married two wives, who were both alive, for any thing that can appear otherwise, at one time, it is further ordered by this court, that the said Norman shall henceforth be banished out of this province, and is to depart thence within 7 days from the date hereof; and in case he shall be found, after that, within this jurisdiction, he shall, forthwith, according to law, be put to death.'

A wife, for abuse to her husband, was bound over to her good behaviour in a recognizance of £10. and the court ordered that if the husband, or others, should make further complaint, she should forfeit the recognizance, or receive fifteen lashes. And bound over the poor husband for the good behavior of his wife, until the next term. The husband, of course, made no farther complaint, and as nobody else did, he was discharged from his recognizance, and the wife escaped punishment.

A man was indicted for a violation of the law which provided that no woman should live upon the Isles of Shoals, 'for that he broke the said law by bringing his wife there—and that he also carried on to said Isles a great parcel of goats and fowls, which destroyed the fish'—against which I believe there was no law. 'The court ordered the goats to be removed off the island; but that if no further complaint be made against the woman, she may remain and enjoy the company of her husband.

A man was charged with a rape upon the wife of another, and found guilty

[1]The reasoning of the court in this case was certainly logical, be the law as it may; for if the man was guilty of adultery with the woman, it followed that the woman was guilty of adultery, at the same time with the man; and the court considered that a plain mathematical corollary must necessarily be a legal inference. I ought to rescue this court from any suspicion that the rights of females were in this instance disregarded by them; for soon after, I found another case, were a woman was presented for adultery with a man named in the presentment; and the man was neither charged, nor put upon trial; yet the court sentenced both for the offence. The vulgar adage, *sauce for the goose is sauce for the gander*, seems to have been received as a maxim of law.

of incontinence, but not guilty of force. The court sentenced him to 40 stripes save one—or a fine of £40. one half to the province, and one half to the injured husband.

A record states that 'Miles Rhodes and Patience his wife being presented for fornication—he appearing for himself, and in behalf of his wife, and owning the fact—it's considered by the court that they receive 7 stripes a ps on their naked backs at the post—and to pay fees of court 10*s*. a ps, or to pay a fine of 25*s*. a ps to her Majesty and fees aforesaid, and stand committed accordingly. By their humble petition 7*s*. 6*d*. a ps of their fine is remitted."

There are many records of this latter description, and the sentences are pretty uniform.

In 1651, 'It was ordered that the Grand Jury have two meals allowed them by the country whilst they continue upon the country's service. Jury allowed 12 pence a man for each action above £10. Actions under but 8 pence.'

One record more on the criminal side.

"The Grand Jury in behalfe of our Sovereign Lord the King do upon the evidence and information of Robert Jordan Indite Capt. James Carr for a suspicion of fellony, by having complyance with thoose, that stoole Mr. Jordan's sheepe, which appeareth partly by his own confession, in declaring that he had knowledge of their carriage before they came; and, for his own particular the said Carr had not any matter of concernment in these parts. The Grand Jury upon the trial of Capt. James Carr's indictment returned an *Ignoramus*."

It seems almost unnecessary to exhibit any specimen of the records in civil actions; and my extracts shall be few.

"Capt. Paul Whitt plaintive in an action of trespass against Mr. Thomas Wethers in tenne pounds. The jury find for the Plt. and give him 2 pence damage—no costs. This action is renewed.

George Walton plaintive in an action of defamation against John Touts. The jury find for the defendant, and give him 20*s*. damage, and costs of court."

The following are subsequent to the submission of Maine to Massachusetts.

"In an action of trespass for selling timber on the Plt's. land." The verdict is as follows: 'The jury find for the Plt. and give him what land he had possessed and improved with one penny damages, and costs of court. The court refused to accept the verdict, but refers the case to the judgment of the next General Court at Boston.

Mr. Nicholas Shapleigh Plt. in an action on the case for unjust molestation against Mr. Robert Knight Dft. The jury finds for the Plt. 40*s*. damage and costs of court. This verdict disaccepted by the court the thing not being legal for the jury to bring in a verdict to this court, which exceeded the some of 40*s*.

At the same term, however, Jonathan Webster was Plt. vs. James Shyrland, 'in an action of debt upon account.' 'The jury finds for the Plt. £18. 5. 5. and costs of court, being 18*s.* 9*d.* with two shillings more for an execution—upon which verdict, is ordered to deliver up the judgment and execution which was granted him against Thomas Waymouth, upon resignment whereof, execution is granted against Shyrland.'

The foregoing is a pretty correct specimen of the principal part of the records of these ancient courts. Many civil suits were disposed of without trial; many were settled by reference, or, in the language of the record, referred to certain persons 'to end;' many are marked in the margin 'agreed;' and, as to many others, there is no record of any proceedings whatever.

The government being organized anew in March 1679—80, and the inhabitants taking the oath of allegiance to Massachusetts, provision was made, among other things, for appeals, in all cases, criminal and civil, from the Inferior Courts; that no sentence should be given against the life, member or estate of any person, without the concurrence of the major part of the assembly; that either Plt. or Dft. may object, before pleading, against any of the Justices or Deputies, if he had reasons of weight or moment, and he should be heard therein. And it was 'ordered that the printed laws, orders, and *Presidents* that have been heretofore practiced, and ware of late in uss, in this province, before this last change in government, and not being repugnant to the laws of England, or Infringing the liberties and priveleges of the people here, as by His Majesty's Royal Charter granted to Sir Ffardinando Gorges, knight, shall be and remain, in full force, power and virtue, to all intents and purposes in the law, until the General Assembly, or Counsill in this province shall take order therein.'

Subsequent records shew that *former precedents* were not departed from for many years. Presentments retained the same characteristic brevity and uncertainty, even after persons were appointed by the courts as attorneys for the king, and the records do not vary in character from those which preceded. I will exhibit a few of them.

"Arthur Beale for non-prosecution of his case contra Capt. Wm. Haham is ordered to pay 40*s.* in reference to his appeal. The payment of which 40*s.* is discharged by said Beale in lew of a some of £3. odd money, due unto the

aforesaid Beale formerly from the county, for fetching Downs and his wife in his boate to the court, severall years agone.

Thomas Cossons charged with suspicion of perjury. The court finds him not gylty; but being convicted of presumptuous and reproachful expressions against Capt. Joshua Scottow, which do not appear to be true, is sentenced to be admonished, and pay the costs, 10*s*.

Mr. John Bray complayns of Goody Fra. Whitte for stealing of a silver spoon. The case being examined before the President, Fra. Whitte fined for lying about the premises,"

But notwithstanding the barbarism exhibited in the records, we here and there (and more frequently than heretofore) find proceedings of a more respectable character; but I will mention first, a few cases as early as 1640, where it is probable that Thomas Gorges instructed both parties in matters of form.

"Ambrose Berry Plt. vs. John Smith Dft. in an action of account. The declaration of Ambrose Berry Plt. The Plt. declareth that the Dft. oweth him upon account between them the eleventh day of May last the sum of £4 11. 8. which the Dft. refuseth to pay, notwithstanding he hath been often thereto required, and thereupon he brings his action, and craveth for his damages," &c.

"The answer of John Smith Dft. The Dft. hereunto answereth and saith that he doth not owe the Plt. the aforesaid sum of £4. 11. 8. in manner and form as the Plt. declareth, and thereupon puts himself upon the trial of 12 men &c. The jury give in their verdict, and find for the Plt. upon account £4.11. 8. and for damage 1*s*. Judgment is given upon the verdict, and execution awarded."

The next case is called a Bill in Chancery.

"The complaint of John Kirkford vs. George Cleeves and Richard Tucker. The complainant humbly sheweth that about the 14th day of November 1637, there was an account passed between the complainant and George Cleeves and Richard Tucker, which account ending, among other things, the said Geo. Cleeves and Richard Tucker, for satisfaction, did sell and deliver to the complainant 1000 clapboards, receiving then from him a general acquittance, which the complainant did then and there likewise give the said George Cleeves and Richard Tucker, they promising the complainant that if he could not enjoy the said clapboards, that they would, notwithstanding the said acquittance give him satisfaction for them, according to the rate he took them; notwithstanding the said Cleeves and Tucker did formerly know that the said clapboards were in controversy, neither can the complainant enjoy them, and they utterly refuse to give the complainant satisfaction for the same—whereupon he humbly entreateth this court to take the same into consideration, and to grant him the like privelege, which the honorable court of Chancery affordeth all His Majesty's subjects in cases of this nature.

The court hath ordered the Dfts. to answer to this bill at the next court to be holden here."

I believe there was no answer, and that there is no other case in which the Chancery powers of this court were put in requisition.

"Memorandum, that here is a matter depending in this court, between Mr. Edward Godfrey and Mr. George Cleeves, concerning £20. which the said Godfrey doth demand of the said George Cleeves by virtue of an order out of the High Court of Star Chamber, for costs in that court by a special writ." For aught that the records shew this matter seems to be yet depending.

There is a declaration in an action for slander which is substantially good and pretty well in form, to which the record exhibits the following :

"*Answer.* Tho. Purchase cometh into court and defendeth the wrongs and injuries when and where he ought, and saith that he hath not slandered the Plt. in manner and form as the Plt. hath declared and thereupon puts himself on a trial by the jury, and craveth a dismission with costs."

In another action of slander there is a plea of justification—beginning as the last, and after pleading that he the Dft. hath not slandered, &c. in manner and form, &c. adds—

"And that what he hath spoken of these things whereof the plaintiff accuseth him, the Dft. saith he deposed it against the Plt. in behalf of the king before Mr. Edward Godfrey, one of the councillors of this province, and that divers others have deposed the like things against the Plt. which he is brought to answeare at this court ; and therefore prayeth that this suit may be stopped till the Plt. hath been tried by the Grand Enquest, and then doubteth not to be dismissed with his costs. The Plt. and Dft. by order of court join issue, and put themselves on trial," &c.

It was unfortunate for this Dft. that the trial was not postponed, for the Plt. was presented, tried and convicted upon the criminal charge, but the jury found poor Knight guilty of slander, for simply declaring the truth, when put upon oath to do so, and they returned a verdict with £5 damages.

But I sicken of extracts. The records of many years may be passed over, as not materially varying in character. Now and then a case appears which will bear the test of modern examination. At this period there were no regular lawyers, exclusively or principally employed in professional business ; but there must have been some men of legal education, either in Maine, or not far distant. This

opinion, which originated first in a consideration of the motley complexion of the records is confirmed by the valuable researches of one of my audience. Mr. Willis, in his History of Portland, part 1st, states that " Thomas Gorges arrived in the course of the summer of 1640 ; that he was a young gentleman of the Inns of Court, in Westminster, a kinsman of Sir Ferdinando Gorges, and was sent by him with a commission for the government of this province ; and that, assisted by the councillors, he held his first court at Saco, Sept. 8, 1640."

Mr. Gorges remained here only two or three years ; but during that short period it may well be believed that some of the magistrates profited by his learning, and from the stations to which they were elevated, we may suppose them to have been men of good ordinary education, at least.

In 1733, the records of the Court of Sessions had become much more regular than could have been believed without proof. Tradition accounts for this, for it has transmitted the information that some of the magistrates had pretty extensive law libraries. I would not be misunderstood to mean what in our times would be denominated an extensive library which a Methuselah would scarcely find leisure, or even time to read ; but good store of black letter learning, a few volumes of which, modern notions notwithstanding, are worth a multitude of recent publications.

John Wheelwright, Wm. Pepperell, Jere. Moulton, John Hill and Simon Frost, Esquires, were in commission, when the proceedings and practice began, more obviously, and more generally to improve.

As early as 1708, the ancient statute relating to actions of trespass *quare clausum fregit* was well understood by some suitors, or by persons who advised them, and pleadings under it substantially correct. In 1718, I found an action of debt on bond, with a profest in the declaration, and the pleadings substantially sufficient, and almost in approved modern form, also records of powers of attorney, and other legal instruments, which were regular in every respect. Many records in actions of trespass, and some other suits, in 1722, will support pretty well a modern examination.

About this time the courts in York were sometimes attended by a

regular lawyer, and to this cause must be ascribed the stricking distinctions we find between ignorance and learning. But the attendance of a lawyer (for at this early period I find only one at a time) was not constant; and the evidence of it very obviously appears in the diversity of character which the records exhibit.

At July term 1741, Matthew Livermore, Esq. and Mr. Noah Emery were appointed, by the court, attorneys for the king. Mr. Emery was appointed to perform the same duty at November term 1741. He was also appointed in 1743, 1748, 1752, 1759, and probably at several other times.

In April term 1744, Mr. Emery and Daniel Farnum, Esq. were appointed. At most of the terms in the years just mentioned, the presentments were in the old brief form ; and probably it was considered an *ancient precedent*, which the Ordinance of President Danforth directed to be preserved. In 1751, innovation seemed to begin. The record is as follows :

"The jurors of our sovereign Lord the king upon oath, do present,

The town of Falmouth, in said county, for not being provided with a grammar school as the law directs.

Benjamin Branch of Scarborough, wigg-maker, for not frequenting the public worship of God, on the Lord's day, for 3 months past.

Morris O'Brian of Biddeford, in said county, taylor, for a breach of the sabbath, for that he, on the Lord's day, being the last day of March last, did break ground, and sail in a vessel down the river in Scarborough, in said county unnecessarily, in a time of divine service."

There are one or two other charges,—the whole certified by one subscription of 'John Stackpole foreman.'

Very soon after, a bill of presentments, otherwise similar in technical formalities, concludes thus :

"All which is contrary to the peace of our said Lord the King, and the laws of the province of Massachusetts Bay, in such cases made and provided."

In October 1758, Daniel Farnum Esq. seems to have more thoroughly broken the shackles of President Danforth's ordinance for the protection of *ancient precedents*, for he ventured to draw his presentments separately in modern form ; yet they were not separately subscribed ; but one signature of the foreman of the Grand Jury was affixed to the whole.

The old form, however, seems to have been reluctantly departed

from, for at a court in 1759 it was adhered to again. At another court in 1759 Daniel Farnum Esq. and in October 1760, and January 1761, Mr. Caleb Emery, were appointed. From this time the records exhibit more regular indictments.

As early as 1727, actions of Trespass and Ejectment were familiar remedies. Actions of debt on bond were usual, and some of their proceedings in regular form. Two actions of Detinue were entered this year ;—in the first the declaration was tolerable ;—the other was instituted without professional assistance, and the law of the case seems to have much puzzled the court ;—the record is as follows :

"William Vaughan, executor of George Vaughan vs. James Fly, in a plea of Detinue for that the said Geo. Vaughan at Scarborough aforesaid, on or about the ninth of January 1721—2 had in his own right and property the half part, or shear in a one horse colt of the age of about one year, the other half part or shear, in which colt did then belong to the dft. who on, or about the said 9th of January 1721—2 did sell his right and property in said colt so that the whole right and property in said colt did belong to the said George Vaughan Esq. deceased.

The writ being read its considered by the court that the writ abates ; for that there is no marks, nor any colour of said colt mentioned in the writ, and that the said James Fly recover of said Vaughan costs of court."

I do not find that the doctrine of wager of law was ever admitted in Maine.

In 1695 there was a plea of the case for that the Dft. "doth withhold and refuse to deliver to the Plt. possession of a certain tract or parcel of land, which he hath fenced in and improved since June 1682 containing &c. and lying &c. being part of a certain tract &c. of which tract or parcel of land A. B. the Plaintiff's ancestor died seized in his own right in fee, and now of right belongs to the Plt. although often requested," &c.

This declaration bears the mark of professional skill, and it is not a solitary instance of the kind ; for I found other suits, where land was demanded in a plea of the case. It was probably considered regular in former times, under the old doctrine, which fixes no limits to the ancient writ *in consimili casu.*[1]

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[1] A copy of an ancient writ of this description has fallen into my hands.

"County York. William and Mary, by ye grace of God of England, Scotland, France and Ireland, King and Queen Defendants of ye faith, &c. To ye Sheriffe of our County of Yorke, Greeting. Wee Comand you to Attach ye goods or Estate of Nathaniel Kene of Kittery, Carpenter, to ye Vallue of forty

Although as late as 1741, there were, occasionally, gross absurdities in the records ; yet the aid of professional men elevated their general character. In 1741 declarations upon promissory notes, quantum valebat, quantum mercuit, actions of trespass, and actions upon statutes, were generally regular. Writs of Entry upon Disseizin were generally good in substance, and in form also, except that they were called pleas of Ejectment, which was a general practice long afterwards. I found a declaration in Formedon, accurately drawn, in other respects, called a plea of Ejectment. In 1752 and 1753 there are several Common Recoveries unexceptionable. The counties of Cumberland and Lincoln were incorporated in 1760.

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pounds, and for want thereof to take ye body of ye said Nathaniel Kene if he may be found within ye precinct, and him safely to keep so that you have him before our Justices at our next Inferior Court of Common Pleas, to be holden at York within or for our said County on ye first Wednesday in July next Insueing, ye date hereof then and there to answer to ye Compl't of John Shepard of Kittery, in said County, in an action of ye Case, for that ye said Nathaniel Kene doth unjustly detaine and withhold and forcibly keeps out of Possession ye said John Shepard of a Certain tract of Land of about eight or ten acres Joyning to his house, being given and granted to said Shepard by ye Town of Kittery, June ye Twentyeth, 1672, as by ye town grant doth more at Large appear to ye said Shepard's Damage Twenty pounds, or what may appear with due Damages, and have you there this writt. Witness Francis Hook, Esq. at Kittery this 22th day of June 1694, in ye Sixth year of said Reign. Pr Curiam, John Wincoll Cler.

A True Coppie of ye original Exam'd pr Jos. Hammond Cler.

This within written attachm't was Serv'd on ye body of Nath'l Kene, and read to him and his dwelling house and all his land in Spruce Creek, or to ye vallue of Eighty pounds Starling ye said Kene made over to me for his personal appearence as is Expressed in this attachm't within written ye 12th day of June 1694. By me, Joseph Curtis, Sheriff for ye County of York.

A True Copie of ye Sheriffs return on ye back of ye original writt.
Exam'd pr Jos. Hammond, Cler.

Copy of a Judgment in a similar case.

County of York. At their Majesty's Inferior Court of Common Pleas, holden at York, July, ye 4th 1694. John Shepard is plt. in an action of ye Case for unjustly and forcibly detaining land as per attachment, Versus, Nathaniel Kene, Defendant. The Jury finds for ye plaintiff ye Land in Controversie and costs of Court. The Court Accepts ye verdicts and ye costs allowed 2*l.* 10*s.* 10*d.* The Execution Served September ye 5th and returned October 2d.

A True Copie as appears of Record in ye County of Yorke.
Examin'd pr Jos : Hammond, Cler.

Copy of a writ returnable to the Superior Court.

York ss. William and Mary, by the Grace of God of England, Scotland, ffrance and Ireland, King and Queen, Defenders of the ffaith, &c.

Sigi Clum. To the Sheriff of Our County of Yorke, his under Sheriff or

I shall now take my leave of the county of York. I feel, gentlemen, that the extracts I have detailed of its records are insufficient to characterize them fully ; but I know not how to apologize to this audience, for the introduction of so many as I have read. It would be difficult to exhibit the form and features of a non-descript animal without a drawing. Perhaps I feel more sensible of this than that portion of my audience, who have not minutely examined these records. Sure I am that, had time and place permitted, it might easily have been believed, that Shakespeare found the originals of his Dogberry and Verges in the old province of Mayne.

The first Court of Common Pleas, in Cumberland, was held at Falmouth, (now Portland) on 3d Dec. 1760. John Minot, Eze-

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Deputy, Greeting. Wee Command you to attach the Goods or Estate of Joshuah Downing of Kittery, in the County aforesaid, Yeoman, to the value of one hundred pounds, curr't Money, and for want thereof to take the Body of the said Joshuah Downing, if he may be found in your precinct, and him safely keep so that you have him before our Justices of our next Superior Court of Judicature, to be holden at Kittery on Thursday the Sixteenth day of May next, then and there to answer to Mehettabell Warren of Boston, Widdow, and Elisha Hutchinson, of the same place Esq. and Elizabeth his wife, the two only Daughters, and Coheirs of Major Thomas Clarke, als Thomas Clarke of Boston, within the County of Suffolke, in New England, Merch't deceased. In an action of the Case for that the said Joshuah Downing doth withhold and refuse to deliver to the plants. the possession of a Certain Tract or parcel of land which he hath fenced in and Improved since the 20th of June, 1682, containing by affirmation five acres, be it more or less, Scituate lying and being between Watts' Fort and ffranck's fort, on Piscataqua River, within the township of Kittery, within the County of Yorke, late the province of Maine, being part of a Tract of land granted by the General Court of the Massachusetts Colony, held in Boston, on October 14th 1651, unto Captain William Hawthorne, and since purchased by Thomas Clarke, aforesaid, and by said General Court held in Boston October 14, 1668, Ordered to be layd out and was layd out the 20th of June 1682, and by said General Court held at Boston the seventh day of May 1684. Confirmed in Satisfaction of the before recited grant, which land contains 870 Acres lying and being in the township of Kittery, Joyning on Piscataqua River, between two certain places, one commonly called and known by the name of Watts' fort, the other commonly called and known by the name of ffranck's fort, and is in breadth 240 perch, and runs from Piscataqua River North East and by East 580 perch, being halfe the way between the River of Piscataqua and Yorke River, of which said Tract or parcel of land the said Clarke dyed seized in his own Right in fee, and now of Right belongs to the Plantiffs, yet the said Joshuah Downing (altho' often requested) the possession of the said land hath hitherto refused and doth since refuse to deliver to the plts. damage fifty pounds in Money as shall then and there appear with other due damages, and have you there this Writt. Witness William Stoughton, Esqr. at Boston the 17th day of April, 1695, in the seventh year of our Reign. Jona. Clatson, Cler.

This Writt was served on the Body of Mr. Joshuah Downing the 26th day of April, and Bond taken. By me, Joseph Curtis, Sheriff.

A true Copy of the Writt and Returne, Exam'd by Elisha Cook, Cler.

kiel Cushing, Enoch Freeman, and Edward Miliken Esquires, were the Justices. Stephen Longfellow Esq. grandfather of one, and great grandfather of another of my audience of the same name, was its Clerk. The records of this Court, from its commencement until the tumultuous times of the revolution, exhibit an appearance which would be called very respectable, at the present day. The reason of this is obvious from the fact, that now, for the first time, there were learned counsel regularly attending the courts. These records exhibit, almost uniformly, declarations in all the ordinary cases, not only good in substance, but correct in form, with a few exceptions only, which owe their existence to ignorant pretenders, who, at this early period, were permitted to depreciate the much improved character of the records by their absurdities. There are some differences between the former and the present practice. Suits upon promissory notes are, uniformly, called actions of trespass upon the case, in which, perhaps, our predecessors are better supported by authority than our practice is, at the present day. All real actions were yet called pleas of Ejectment, or pleas of Land; but the declarations in other respects are nearly conformable to modern practice. There are, however, some exceptions, and some diversities, which are matters of form only. Some of the writs imitate the ancient *praecipe quod reddat.* This diversity, without doubt, grew out of the confusion of preceding times; and that which had been long fixed by habit, and sanctioned by antiquity, not affecting the rights of parties was perhaps continued, because strict legal accuracy wore the appearance of *unnecessary* innovation. The titles were accurately stated, and regularly traced; and generally, the disseizins were definitely set forth. In 1768, I found a correct declaration by a minister *in jure ecclesiae*, which, however, was called a plea of Ejectment. The perplexities arising from a different doctrine and practice, in England, relative to vouchers to warrant titles, existed at this period, and continued, as is well known, for many years after, until the correct doctrine, as applicable to our situation and practice, was better understood.

The country had now been long enough settled to introduce Writs of Right, in the forms of which, there were some diversities, which however did not render them defective in substance. At this

period, it was a frequent practice to refer real actions, with an agreement that the tenant should hold the land, and if the referees should find the title against him, that they should estimate, and report, the sum he should pay for it ;—in which cases, the referees set forth the metes and bounds in their report, and judgment thereon was conclusive upon the title between the parties.

Actions of account were common, and the previous issue of baiiff, or not bailiff, was tried upon regular pleadings, and a regular judgment to account preceded the appointment of auditors, whose report was the rule for entering up judgment. The more modern, and brief practice of counting in assumpsit was not adopted. The records of this period exhibit many specimens of special pleading, which will bear the test of learned criticism. This is easily accounted for. Theophilus Bradbury, David Wyer jr. William Cushing, John Chipman, Samuel Livermore, David Sewall, John Sullivan, James Sullivan, Theophilus Parsons, and a few others, were all of them occasionally, and two, three, or more of them constantly practising, at the bar of that court.

I cannot forbear to mention the very frequent, and what we should now consider not so respectable, practice of great astuteness in matters of abatement merely. And it appears that our former brethren considered the rule, that only one plea in abatement is to be allowed, very differently from our construction of it at the present day. As only one such plea was admissible, they made the most of it, and joined together as many distinct matters in abatement as they could find, and arranged the whole like causes of special demurrer ; so that if the first should fail, they could resort to the next, and so successively, and if either cause was adjudged sufficient the writ was abated. At the present day we should consider this too reprehensible for indulgence, and it would not be permitted.

But we must not too hastily adopt a modern state of things to former times, and thus judge of the propriety of ancient practice. Until now, our courts had not the constant aid of learned lawyers ; and a state of vandalism had until lately existed from our earliest times. Ignorance and barbarism had dictated the forms of legal proceedings, and spread confusion and absurdity over the records of the courts ; and the period was then recent, when no man could feel himself sure

of safety and protection in his rights of liberty and property ;—I had almost said of his life. If preceding courts had adjudicated upon differences between a man and his neighbor, or upon a charge of some criminal offence, the utter want of certainty and precision in the records might expose him to renewed prosecution and persecution for the same cause. The evils to which the people had long been subjected, had, at length, been felt, and learned counsel were now employed to remedy, or to guard against them, and afford security to the civil rights of suitors. This could not be effectually accomplished, and permanently secured, without setting a face of flint against the wild absurdities and errors of ignorant pretenders, whose awkward blunders were tending to perpetuate, or to restore former barbarisms. The change which had been made by men of professional learning was great—was astonishing. Legal rights were now understood, and they were rendered permanent and secure. It was therefore more than professional duty ;—it was enlightened patriotism ;—it was an object of honorable ambition to watch, with jealousy, every attempt to revive the irregular and illegal proceedings, which had produced great mischiefs, and from which the courts were now so happily emerging. Had the learned counsel, who then attended our courts, adopted a different course, and tolerated ignorance and quackery, confusion and absurdity had, perhaps, marked the character of our legal proceedings to the present day ; for quacks will work cheaper than educated men—a most powerful temptation to the multitude.[1]

[1]Mr. Willis in his History of Portland, Part 2nd, pp. 210, 211, published after this address was delivered, states that the practice of filling writs by Justices of the peace continued after there were regular practitioners in every county ; and that those which were not settled, they generally procured some attorney to manage in court ; which operated severely upon gentlemen who had spent much time and money to qualify themselves to discharge the duties of the profession ; and produced a rule, which was adopted in 1770, by the barristers and attorneys practising in Maine, by which they agreed that they would not enter, argue, or in any manner assist in the prosecution of causes where the writs should be drawn by any person not regularly admitted and sworn, except in cases of necessity. The reason assigned for the rule was, that it was detrimental to the public that persons not admitted and sworn as attorneys should be countenanced by them. This rule, Mr. W. adds, produced much excitement among this class of practitioners, and was brought to a point by the refusal of the Superior Court to admit a person, who had, in this manner drawn a writ for another, to manage the cause which had been brought up by appeal; and the attorneys refusing under this rule, the plaintiff was non-suited. Mr. W. I have understood, is warranted in this by the authority of ancient papers and journals which have come into his hands.

As the pleas in abatement of the period we are now considering would be curiosities now, I will exhibit one of them.

Beginning in the usual form, and praying that the writ may be abated, it adds, "because 1st, there are other joint administrators namely," &c. "not named, as by law they ought, and might have been;—saving which, if the same should be ruled against them, there is no such person in nature as Thomas Fluker, one of the Dfts. named;—and 3d, that the declaration is bad in shewing no cause of action, nor, if any, but a special action on the case.—And further, that the Plt. declares on a supposed breach of promise, but shews no certain sum, or thing promised, as he ought;—and pray that the writ may abate, and for costs."[1]

A mode of pleading in slander, not much in use now, was frequent this period. In a case where the declaration was for slander in charging the Plt. with perjury in his testimony in a suit lately tried, he being a quaker, and put under affirmation,—the Dft. pleaded in bar, that the Plt. on the day named, and in the suit named, he being a quaker, and put under affirmation to testify, &c. did testify, that on the day named, there was no fence around a certain field (describing it) whereas in truth, and in fact, there was a good fence around the said field, of which the Plt. was then and there well knowing;—wherefore the Dft. spoke the words in the declaration mentioned, as he might lawfully do, and concluded in bar. Repli'on that there was no such fence—and issue thereon. In all *other* cases, where the truth of the words was relied upon in justification the pleadings were

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[1] An anecdote of Mr. Gridley has not yet been forgotten. It is related that a client came to him stating that he had a controversy with a neighbor who sought to coerce him into the settlement of an inquitous demand by attaching a ship and cargo just ready for sea—and after stating the case, asked Mr. G. what he must do to protect himself. Mr. G. after a pause, told him to get some friend to replevy the ship and cargo in his own name. This was done, and Mr. G.'s writ of replevin contained a deliberate misnosmer. What Mr. G. had hoped, happened, for the gentleman who defended the action of replevin, eagerly caught at an opportunity to abate the writ of so celebrated a lawyer. He pleaded the misnosmer in abatement; but as Gridley had anticipated, omitted to pray for a return of the property replevied. He prevailed and Gridley seemed mortified by the defeat of his writ. Gridley instructed his client to pay the costs when enforced thereto by an execution, after which the defendant's counsel brought an action upon the replevin bond, to which Gridley pleaded in bar that the suit in replevin had been prosecuted by the Plaintiff as far as he could, and would have been pursued to final judgment; but that the Defendant himself had prevented that, by procuring the abatement of the writ. It is unnecessary to add, that this was held a good bar to the suit upon the replevin bond; and Gridley's client escaped the consequences of the litigious disposition of his neighbor, who sought to defraud him.

in this mode. The first case I found, where special pleading was carried so far as a rebutter, was a suit wherein James Sullivan and Theophilus Parsons, were opposite counsel. It resulted in a demurrer. This was in 1771.

A little before the revolution (April 1772) there was an action of slander for calling the Plt. an informer (meaning an informer against a person named at the custom-house, of a smuggling transaction) alleging, that thereby the Plt. was brought into disgrace and contempt among His Majesty's liege subjects, and put in danger of being mobbed and ill treated by sundry of His Majesty's disorderly subjects, heretofore used to mob and maltreat persons supposed or known to be informers to any of the King's custom-house officers ;—an averment that the information alluded to had occasioned an actual seizure, by the custom-house officers, of a ship, &c.—and a further averment that, by reason of the premises, certain persons had withdrawn themselves from the Plt's. society, and refused all trade and intercourse with him; and that he was in continual fear of some bodily harm A remarkable case, where by reason of words spoken, a Plt. actually suffered all the evils which are the consequence of slander, and yet the law could not afford a remedy, for the words, though slanderous in fact, and in their effect, were not actionable.

The revolution produced a great change in the state of judicial affairs ; for the confusion which prevailed extended even to the proceedings of the courts. In Oct. 1776, Jeremiah Powell, Enoch Freeman, Jonas Mason and Solomon Lombard, Esq'rs. were justices of the Court of Common Pleas, and Samuel Freeman, Esq. was appointed clerk. The records again assumed a motley character ; some of them, almost as barbarous as in ancient times, while others exhibit learning and professional skill ; for there were yet some regular lawyers occasionally attending, while uneducated men were permitted to originate and conduct suits. The manner in which the records are made up is well known to most of my auditors. In York as well as in Cumberland, for several years, names of persons other than professional, are found in the clerk's docquets, under many suits, and the awkward blunders of uneducated men (I do not speak of all) were permitted, when peculiar circumstances rendered the efforts to suppress the practice ineffectual.

A few years after the revolution, I find the appearance of one, as to whom, I cannot forbear to mention a remarkable incident, which I have had from good authority. He had before this been commissioned as a justice of the peace ;—and probably had read many of the statutes; and by some means or other, had obtained forms for a very few of the most common declarations. He filled up writs triable before himself ;—and at length ventured to appear as attorney for a defendant before a brother magistrate, in the same town, who had also occasionally read the statute book, and in the course of his reading met with the law relative to the admission of attorneys, the provisions of which he considered to prohibit the appearance of any person, as attorney in a suit, unless he took the oath, which that statute prescribes ;—the oath was accordingly administered ; and his neighbor, nothing loth, was dubbed a lawyer, as both supposed, by statute authority.

This man's absurdities continued to annoy the courts for several years, and until a regular attorney was settled in the town where he lived. I counted eight appearances for the plaintiffs, and five for defendants, in about two years, which probably was but a small proportion of the number he enlisted in.

About this period the regular members of the bar began to be more careful in their enquiry into the pretensions of candidates for recommendation to the court ; although even then, they had no fixed and definite rules to govern them. Each case stood upon its own ground ;—the oldest member presided, and when the candidate was to be recommended, the presiding member presented him to the court, and moved for his admission. But the Cumberland Bar had no records, nor any elected officers until the 19th of November 1805, when a president and secretary were chosen, and a committee raised to report rules and regulations for its government as an organized body. In the county of York the bar have no records earlier than 1811.

But to return—and I will mention only one case more in the old court of Common Pleas. At October term 1787, John Estes and Uxor were Plts. in an action of slander vs. Alcut Stover, for charging the wife with the crime of witchcraft ; with a *per quod* that she was thereby exposed to be indicted for that offence. There was a

general demurrer to the declaration, and joinder in demurrer. The court held the declaration good and sufficient in law, from which there was an appeal. The appeal was entered at the next Superior Court, and in July 1789, that court decided, the old common law, and ancient statutes notwithstanding, that the declaration was bad and insufficient, and the defendant recovered a large bill of costs.[1]

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[1]This case is of little or no interest to us, as members of the Bar; yet it interests us as men, and as members of the community. It affords a striking proof of the monstrous errors of superstition; and its recent date exhibits a very strong example of the imbecilities of which the human mind is susceptible, without the aids of an enlightened education, and religious instruction. It is not within the plan of this address; and until it was preparing for the press, it did not once enter into my thoughts to take any notice of the evidence prepared to support a suit, which was at least a century too late for its subject matter; but, having a copy of the depositions filed in the case before me; and, after hearing the reflections of a few friends, to whom I have shown them, I have concluded to exhibit them in a note.

"I N. P. do testify and declare that I was in company with A. S. about three months ago, and I heard said A. S. say, as we had been talking about John Estes and his wife, that she had been wishing bad wishes upon his creatures; and her wishes generally came to pass; and he believed she was a witch; but he did not say how bad a one she was;—and further said A. S. said that he did not think she was so bad a one as they were in former times;—and I have heard it reported among the nabours that A. S. has said, that Mrs. Estes was a witch, and I took it that they meant Elanor Estes, the wife of John Estes;—and as to Eleanor Estes' common carracter, I dont no any harm of it." This deposition, and those which follow, were written by the magistrate, before whom the deponents were sworn.

"I Andrew Webber of lawful age do testify and say that I was in company with A. S. about one year ago; and I heard said A. S. say, that he believed *she was a witch*, and I took it that said A. S. meant Eleanor Estes, the wife of John Estes; and the reason I took it that said A. S. meant Eleanor Estes, was because said A. S. and I had been talking about Mrs. Estes, before he said he believed she was a witch;—further I have heard that Eleanor Estes, the wife of John Estes was a tattling woman, and made mischief among her nabours; but as to my own knowledge, I dont know any harm of Eleanor Estes, exsept the common report about town, that A. S. has called Mrs. Estes a witch, and I took it to be Eleanor Estes, the wife of John Estes, was a witch; and further, I have often heard among the nabours, that said Eleanor Estes has wished bad wishes upon said A. S's. cretors."

"I J. W. of lawful age, do testify and say, that I was at the house of A. S. some time in the spring of 1785, and I heard the said A. S. say, and I understood, that he meant John Estes' wife was a witch, and he could prove her to be one; that is, as I think, I can prove her to be one; and he did not know whether he could prove anuf to hang her; but he expected he could prove anuf to save the cost."

"I S. T. of lawful age, do destify and say, that I was on the goose island with A. S. in the year 1784, and there was a number of young cattle, that did belong to said A. S. and they ware very wild, and ran very fast, and said A. S. said he wondered what made said cattle so wild; and I made answer, may be they are bewitched; and said A. S. made answer;—and then I made answer, do you think Mrs. Estes is a witch; and said A. S. saith yess, and I can prove it, and if she dont mind, I'll have her hanged, and I took it said A. S.

The first Court of Sessions, in Cumberland, was held on the 3d of Dec. 1760, at which were present John Minot, Ezekiel Cushing, Enoch Freeman, Edward Milliken, Jonas Mason, Stephen Longfellow and Walter Simonton, Esquires ; Stephen Longfellow, Esq. was appointed Clerk. This court had cognizance of all minor offences viz. larcenies, assault and battery and other breaches of the peace, nuisances, fornication, and various statute offences ; and civil jurisdiction in relation to the management of common fields, and a few other matters. The court was very respectable, as the records manifestly shew. Some of them had a liberal education. Enoch Freeman and Stephen Longfellow, Esquires, were graduated at Cambridge,—the former in 1729, and the latter in 1742. I have not ascertained such a fact of any of the rest ; yet it is not improbable, that some of them were as well educated. The four first were also Justices of the Court of Common Pleas as above mentioned. Jonas Mason was a Justice of the Peace, and of the quorum throughout the province. The records of this court from 1760 to 1774, when the tumultuous scenes of revolutionary times threw every thing into con-

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meant the wife of John Estes ;—and I heard said A. S. say, he believed there was a witch between his house and mine ;—and further, the said A. S. and I were on the said goose island, at another time, a catching hoggs, and said Stover catched his hoggs, and I could not catch mine ; and said Stover said that old Eleanor was not in his hoggs ; I believe she is in yours ; and I thought he meant the wife of John Estes ;—further, I never heard the said Stover say that Eleanor, the wife of John Estes was a witch, and further saith not."

About the same time when this suit was pending, there was an indictment found at Court of Common Pleas in York county, charging a person with witchcraft. As it does not come within the course I had marked out for myself in this address, I did not examine the records of so late a period in York county, and am therefore unable to state date or names. As the old provincial statute against witchcraft was passed before there was a superior court of judicature in Massachusetts, indictments of this description were triable in the Inferior Court, of which the Court of Common Pleas was successor. The late Judge Wells, who charged the jury in this case, very gravely instructed them that the ancient statute against witchcraft, upon which the indictment was founded was unrepealed, he therefore considered it his duty to state that it was of force, and a law of the Commonwealth ; but added, that he also felt bound to say, that it was the firm and settled opinion of every man of learning, or good sense, or even of common understanding, that witchcraft had never existed since the time of the Saviour's advent. How therefore it was possible to convict a person of such an offence, he was unable to conceive ; that he must leave the law and the fact to them for their consideration. I regret now that I did not take a memorandum of the record. Who drew the indictment I know not ; probably it could not easily be avoided ; and no evil consequences could arise ; inasmuch as, had there been a conviction, no sentence could have been passed upon it.

fusion, are very far superior to the records of that court, at any subsequent period, to the time when its judicial powers were transferred to the Court of Common Pleas. I will take a brief notice of a few cases before the revolution.

Alexander Ross was appellant vs. Simon Gookin, at May term 1761, in a process brought by the appellant at a Justices' Court, &c. when and where the appellant was complainant and the appellee respondent, in these words viz.: "that the same Simon Gookin, being a person of the age of discretion, on the 6th day of February, &c. at Falmouth aforesaid, did wittingly and willingly make and publish a lie, tending to the defamation and damage of the complainant, by saying that your complainant had reported, that the Rev. Thomas Smith was for having one John Richmond, a noted thief and rogue, keep school in Falmouth, and that the said Smith had signed a paper for the said Richmond's keeping school, as aforesaid; which words were a lie, tending to your complainant's defamation and damage, and contrary to the province law in such case made and provided."

The reasons for repealing this old statute, probably were, that its practical operation was rather injurious than beneficial; but it seems desirable that there should be some legal punishment for such abuses; and perhaps a modification of its provisions had been better for the community than an unqualified repeal.

Moses Hanscom was charged by indictment "for that he, with force and arms, and out of his malice and contempt of the authority of our Lord the King, committed to the Justices assigned to keep the peace, did utter and pronounce unto, and concerning, one William Simonton, one of the Justices assigned to keep the peace for said county, 'damn your authority and the authority of all such Justices,' he said Hanscom well knowing said William Simonton to be a justice of the peace aforesaid, against the peace of our Lord the King, his crown and dignity. And the said Moses being arraigned by Mr. Samuel Livermore, pleaded a general demurrer, and prayed judgment that the indictment be quashed, and that the Deft. may go without day." Daniel Farnum, Esq. appointed by the court to act for the King, joined the demurrer, and concluded by praying "sentence against said Moses for his offense." The court held the presentment sufficient, and find the delinquent 20*s*.

In 1769, Samuel Pickering was charged with uttering contemptuous words, nearly similar, applying them to Moses Pearson, Esq. a Justice of the Peace, and to the whole court. The record states that,

"After examining the witnesses, it appearing to the court that he had uttered said contemptuous words, it is therefore ordered, that he be committed to gaol immediately, there to remain until to-morrow at eleven o'clock in the

forenoon, after which to be set in the stocks for the space of two hours, and then ask pardon of the court, and to pay costs, and stand committed," &c.

In cases of fornication, where there were proceedings against the person charged as father, the court, and not the jury, tried the question of fact.

"At April term 1766, Samuel Waldo, Theophilus Bradbury, Esquires, Doctors Nathaniel Coffin and Edward Watts with their wives, and several other ladies and gentlemen (I believe 18 in all) were indicted for dancing in the house of Joshua Freeman, innholder, on the 9th of December 1765, being a tavern, and a licensed house, contrary to law, and in evil example, &c. The record informs us that the said Theophilus Bradbury, for himself and his wife, and all the rest, by said Bradbury, their attorney, 'come and say that the said Joshua Freeman, on the first day of December A. D. 1765, demised to the defendants the northeasterly chamber in his house, mentioned in the bill of presentment, to hold to them, for their sole use, whenever they should have occasion therefor, for the space of three months from the same day, and for so long afterwards as both parties should please; into which chamber they entered, received the keys, and full possession thereof, and held the same accordingly until this day; and being so possessed, they, in their said chamber, on the ninth day of the same December, did dance, as they lawfully might do, which is the same dancing mentioned in the bill of presentment, and this they are ready to verify—wherefore, &c. And Mr. David Wyer, attorney for our sovereign Lord the King, comes, &c. and says that the plea aforesaid of the said Samuel Waldo and others, and the facts therein stated, are not a sufficient answer in law to the bill aforesaid, wherefore, &c. Joinder in demurrer. The court adjudged the plea a sufficient answer, and that the defendants go without day."

There was always a professional man appointed as attorney for the king, of course the indictments were well drawn. The offences tried were larcenies, assault and battery, and other breaches of the peace; breaches of the sabbath, and of the license laws, and other statute offences. And it may be observed, that for sixty or eighty,—perhaps a hundred years, more than half of the criminal charges were for fornication. The usual punishment of the latter offence was a fine of 6*s*. or 10*s*. or five stripes. Sometimes when the offence was found by the Grand Jury, they also named a putative father; and sometimes the presentments stated that the father was unknown.

The tumultuous scenes of the revolution produced a general confusion. A period had arrived when many experienced public officers had fled, being hostile to the existing state of public affairs;—others

had resigned their commissions, fearing that the political situation of the country would no longer sustain them in the discharge of duties, to which they had been commissioned under royal authority—an authority which the American people had shaken off. Those who remained in office were considered objects of jealousy by their new associates, who had not the advantages, which a better education and experience had conferred upon their predecessors; because other qualifications, in revolutionary times, were considered indispensable requisites for office. Hence it resulted, that successively, a number of inexperienced magistrates were introduced—men, respectable in private life and character, but wanting in that knowledge and experience, which had distinguished their predecessors. Thus it was an unhappy consequence of the revolution, that the courts were, for a long time, of a character much inferior to those which preceded it; and this state of things continued to grow worse,—notwithstanding the occasional appointment of gentlemen of talent and education (of whom few associated with their brethren on the bench) until public necessity called for a remedy. The important change, which transferred the criminal jurisdiction, and some other powers of the Court of Sessions, to the Court of Common Pleas, and the erection of a new Court of Sessions, with powers limited to the prudential concerns of the county, has been of so long standing, that the proceedings under the old establishment seem like the dreamy recollections of by-gone days. Many of the present members of the Cumberland bar never knew this old court. It was before their day. There remain, however, a few who knew that the magistrates of former times were certainly as intelligent, as well educated, and as respectable as those of the present day; yet the extension of their powers, by the further jurisdiction given them as a Court of Sessions, was fraught with great mischiefs, which are now happily done away. The civil and criminal jurisdiction of the former court sometimes involved questions of law, which they were utterly unable to decide; and many of them, even to comprehend. They formed indeed a multitude of counsellors, but with such counsellors there was very little safety. Notwithstanding the formidable obstacles which stood in the way of an able and sufficient discharge of their duties, the magistrates of former times seem not to have had any doubts of their qualifica-

.ions; and generally they all hastened, with alacrity and confidence, to the place of their sessions, at an early hour on the first day. One instance of the contrary, however, appears in the county of York, which the record has immortalized by the following memorial.

"The court met. N. B. There being no court—the court adjourned."

Portland, or rather Falmouth Neck, having been burnt by the English, on the 17th October 1775, the Court of Sessions was held at the house of Mrs. Alice Greele, an innholder in Portland, on the 31st of December of that year. It was a one story building, which is yet standing on Congress-street. At this term Samuel Freeman was chosen clerk, who continued to hold the office as well as the clerkship of the Common Pleas, until the separation of Maine from Massachusetts. The prosecutions were of the same character as formerly, with the addition of an occasional proceeding against such as sold coffee, or other articles, at a higher price than was fixed by the statutes against monopolies.

"In 1780, a record states that "Phillip Crandal appearing to answer the presentment of the Grand Jury, charging him with an offense, pleads not guilty. But for certain reasons, the Court recommend the States' Attorney to prosecute no further."

In 1781, a record states that "Reuben Farlin, otherwise called Macfarlin, otherwise called Crocker, otherwise called Johnson, being brought before this court upon a suspicion that he is inimical to the Commonwealth; and it appearing that he is so, and that it is dangerous to suffer him to go at large :— Ordered, that the clerk issue a warrant for committing him to gaol."

It was a frequent practice for females to come into court, and confess themselves guilty of fornication, and receive a mitigated sentence; and at October term 1784, three females, presented for that offence by the Grand Jury, were severally arraigned by proxy, and by proxy pleaded guilty.

In 1788, a man was presented "for that he on, &c. at New-Gloucester, with force and arms on the body of J. P. wife of Edward P. then and there, in a field, in New-Gloucester aforesaid, did offer insolence and violence to the said J. P. and did then and there, with force as aforesaid, attempt to dispoil the said J. P. and to deface and damnify her attire; all which is against the peace and dignity of the Commonwealth, and a law of the same, entitled an act in addition to an act made and passed in the tenth year of Queen Anne, entitled an act for suppressing robberies and assaults."

In October 1790, a record states, that two persons "come into court and *confess that some time* in October last, they entered the garden of Caleb Rea,

and pulled up, and carried away half a peck of onions, contrary to a law of the Commonwealth, entitled an act more effectually to prevent trespasses in divers cases. It is therefore considered by the court that they pay a fine of £3 each and costs of prosecution, and stand committed till sentence be performed."

In 1792, "On petition of James Lunt and others, setting forth that a certain dwelling house hath been, for several years past, continued on a street, laid out and improved as a private way by the town of Falmouth, to the great inconvenience and common nuisance," &c. "and praying that the court will take order thereon; whereupon the court resolve themselves into a committee of the whole, to view the premises, and report thereon;—and the said committee having attended that service, report, that the said building is a nuisance, and ought to be abated. The court thereupon adjudged and determine that the same is an incumbrance to the street, and a nuisance, and that it ought to be abated; and that a precept accordingly be issued to the Sheriff," &c.

In 1792, a man "indicted for selling liquors without license, by agreement between himself and the attorney for the government, that he shall be tried by the court, without a jury, pleads not guilty, and after a full hearing the court adjudge him not guilty."

But gentlemen, I will not tire your patience with further extracts. Let us pause a moment,—and look back through past ages to the period at which we commenced. The retrospect excites our astonishment at the strong contrast, which is exhibited at the present day. Had the errors and absurdities of our early times been left to the natural course of things, and their correction to the ordinary and gradual progress of human improvement alone, many centuries must have elapsed ere the wonderful change, which so happily exists could have been effected. But what otherwise could only have been hoped from the progressive melioration of many centuries, has, in a comparatively short period, been most wonderfully accomplished.

The progress of this great change, by the gradual introduction of the common law, it would be difficult to trace;—certainly impossible without a very minute inspection of the records of the highest judicial court; for the principles and maxims of the common law could only be introduced, when controversies which involved them came incidentally under the judicial cognizance of that tribunal.[1] Their records are in Boston. I had never examined them, and circumstan-

[1] As early as 1698, and perhaps earlier, writs of review—and I believe writs of error also, were not unfrequent in the county of York. I have in my possession the copy of a judgment of the Superior Court in a writ of review. These afforded the means of correction of early barbarisms.

ces have not permitted me to do it, since I undertook the task, which is now fatiguing your patience. I regret the necessity which compels me to be silent upon that subject. It would have been a more profitable, and a far more pleasing theme than has fallen to my lot to discuss ; and it would furnish sufficient matter for an address, without the accompaniment of any thing, which I have endeavored to exhibit before you.

The great change we are contemplating would have been accomplished sooner ; but adverse circumstances, for a long time, delayed the operation of the only means, which could effect it.

In the first charter of the province of Massachusetts, there was a provision for appeals, in all cases, from the Inferior Court to the General Assembly, for which reason no practising attorney was allowed to sit there as a deputy. It was prohibited by a colonial law of 1663. The same objection would apply equally to suitors; and it would be very remarkable if such were not sometimes elected. If such cases occurred, certainly they ought not to have been judges on their own appeals ; and without doubt it was so regulated. The like regulation might have been made in the case of lawyers, without the prohibition of their election. But by this law the only class of men, who could apply a remedy to the defective system of jurisprudence, were excluded from the legislature. And even under the second charter, it was not, I believe, until 1738, that any lawyer was returned a member. In that year Boston elected John Read, Esq. who was "justly regarded one of the greatest and most useful lawyers his country had produced ;" but he was not re-elected. Perhaps there was no other until 1758, when the people were struggling for liberty against the requisitions of the British government. In the latter year Boston returned as a member Benjamin Pratt, Esq. another eminent lawyer, whose learning and talents afterwards elevated him to the office of Chief Justice of New-York. Mr. Pratt was re-elected the following year ; but he had enlisted on the side of liberty; and we have reason to believe he owed his elections solely to the consideration, that he was able to bring much talent into action, in support of the people's cause ; and not to any expectation, or desire of employing those talents upon any other subject. After this, the election of learned lawyers was more frequent, and they soon began

to take the lead in public affairs. This however, we may believe, they would not have been suffered to do, but for their devotion to the all engrossing subject which procured their election.

Until after the second charter we had no judges of legal education; and it was not until 1695, that the Superior Court of Judicature was organized. Its judges, selected from the most eminent of the profession, had continued in official duties about 60 years, when the election of lawyers to the legislature became more frequent. That court had been able to do much, notwithstanding the authority of precedent, towards the destruction of former barbarism; and now, judicial affairs, in the last resort, being entrusted to upright and eminent lawyers, as judges, while others were eligible,—and had seats, and influence too, in the legislative body, the progress of improvement became very apparent; and if the progressive adoption of common law principles was slow, it was always permanent, and the principles were of extensive operation and of deep importance. The provisions of many beneficial English statutes were recognized and adopted and colonial statutes past equally important and extensive in operation.

The great change which our jurisprudence has experienced, has been wholly effected by the invaluable labors of learned and eminent members of our profession. The fact is too obvious for ingenuity or malice to gainsay it, that, in this important respect, the community are more indebted to the labors of lawyers, than to those of all other classes united.

An illiberal and uncharitable jealousy against our profession probably existed much earlier than the ancient records furnish any express evidence of the appearance of lawyers in the courts; for long before these records mention the name of any lawyer, there are, as I have already noticed, occasional proofs of legal learning and professional skill, exhibiting an odd contrast to a multitude of cases among which they are found. It is probable that these were cases where professional aid was obtained out of court, and where the parties appeared for themselves, and made a profitable use of the legal advice they had procured. This supposition seems to be well founded, and it exhibits in a strong point of view, the benefits which such suitors derived

from assistance so obtained ;[1]—it might, in some cases, operate injuriously to the suitors, who were not so well advised ;—it might too—in an ignorant community, have originated some illiberal prejudices against our ancient brethren. Their names cannot be ascertained ; for neither the old records, nor history mention any other lawyer, (unless two persons must be excepted) so far as I have been able to ascertain, than Thomas Gorges, who came from England in 1640, and returned thither in 1642 or 1643, for about a hundred years.

If our ancient brethren were guilty of any faults to warrant the uncharitable jealousies against them, neither history nor records disclose

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[1]Probably the following ancient paper, plainly dictated by legal advice, although of comparatively late date, affords an example of what was done in times yet more remote.

"County Yorke. John Woodman apell't his reasons of apeale from a Judgment granted agst him, by Wm. Peprill Esqr. one of his Majest. Justices for said County, on the 16th day of this inst. March ; in an action wherein himself was deft. Cont. Tho. Trafton of Yorke, in sd County, Pltf. and now is apell't unto his Majesty's Court of Pleas to be held at Yorke aforesaid, on the first Tuesday in Aprill next Ensueing ; Ann. Dom. 1696.

Imprimis. The now apell't was sued in a sumons to answer a debt of twenty shillings, but not specified in the Sumons what for, therefore that Sumons or writt must certainly abate, for the law is plain if any one is sued, it must be Either by bill, booke or plaint in this there is neither.

2dly. The then plt. sued this appll't for the Estate of another man's, not his own ; had it been his, it ought to be made to apear so upon Tryall, wch I presume by the action, is plainly seen it was not, therefore the apell't has wright in his apeale and expect damage pd him.

3d. The Judgmt wch was Entered con't the apell't saith for twentie shillings debt, as did apear under Maj'r Hookes' hand, and a single evidence of one Eliner Brookes ; now it is very strange in reason (and Law is thereupon grounded) that an Information of Maj. Hookes' should be taken in Court as an Evidence ; he only gives information to this apell't that one Dimond did ow unto one Trafton 20s. wt is that to the apell't ? If Dimond owes Trafton, Trafton must sue Dimond ; Maj. Hookes' is noe Evidence, therefore not valid in law to give an action ; therefore cost and charge ought to be given to the apell't.

4thly. Eliner Brookes, her Evidence is but single, (her husband swears a debt but no sum) hers, with Maj. Hookes Information, is only that Dimond owned he owed Trafton 20s. in part due for a mare ; but what is that to the apell't ? Nothing ; so the action not valid.

5thly. The Law is Positive, that in a writt, the person and case must be understood ; now the apell't was sued for 20s. but not exprest in the sumons or writt for what ; and by the Judgment, Brookes' Evidence saith in pt for a mare ; if so, the plt. should have express'd so in the writt : therefore the writt ought to abate.

6thly. The apell't Jno. Woodman was sued as administrator to the estate of one Jno. Dimond, which he is not ; if he had, it should have appeared soe upon tryall, could not, nor did not ; besides, it is well known that Estate is Insolvent ; and if debts from the Estate must be payd, it must be by due course of Law, the apell't has noe interest in the Estate, otherwise there is

nor has tradition transmitted any account of them. The benefits they rendered to individuals, and to the community, and the deeply important result of their labors, are apparent; further, we know nothing, except that a strong prejudice against our profession has always existed among the ignorant and the vulgar. It has passed successively through several generations, and it has not yet wholly passed away.

But notwithstanding this, the very persons who hold such an uncharitable prejudice do not hesitate to seek our aid, when their rights are invaded, and when their imprudences, their faults, or their crimes involve them in perplexity or danger;—they will even elect to public offices eminent members of our profession, whenever the public exigences demand their learning and talents;—they do it too—in full confidence that no just expectations of the public will be disappointed by their election;—and those, who have traduced us, while they have always profited by our labors, at length enjoy in full security the protection of their civil and political rights, in spite of themselves.

A faithful biography of our predecessors would exhibit the clearest demonstration of my position, that the community are deeply indebted to our profession for the civil and political rights we now so happily enjoy;—and it is much to be regretted that the duty which you have assigned to me had not been much earlier performed by an abler hand. More especially is it to be regretted that Chief Justice

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noe administration granted, but it lies now wth the Judge or Ordinary to settle the same as an Insolvent Estate. Therefore the apell't was not capable of being sued.

All the particulars duly considered, I cannot but believe both Court and Jury will give me all my cost and damages. JNO. WOODMAN.

POSTSCRIPT.—But my last Reason is undeniable, and grounded on the Laws of the Province, Intitled an act ffor the Equall Distribution of insolvent Estates, page the 12, where it is said noe process in law shall be allowed against the Executors or administrators of any such insolvent Estate soe long as the same shall be depending as this case is; and not any Reason made shew of by Commissioners to the honourable Judge as the Law requires; therefore I am not answerable for any such Debt, neither ought the sd Trafton his action to have against me nor any administrator in like case, nor indeed ever to have the same, ffor that the sd Trafton hath not effectually brought in his claime, nor proved his debt before the sd Commissioners, as the Law required; therefore I humble conceive that sd Trafton ought not his action to have, but to pay the apealant all his just cost and damages and rest you to command. JOHN WOODMAN.

Given vnd'r my hand att Kittery, March the 31st, 1696.

Mellen, whom the appointment of the bar at first designated, should, after we had supposed the appointment accepted, have ultimately concluded, after a full consideration of the subject, that his official duties would render it impossible for him to undertake a task of so much labor and difficulty. When the errors and deficiencies of the effort I have made shall be discovered (and I fear they may be numerous) let this be remembered in extenuation.

An able discharge of this duty is indeed a work of difficulty; and the difficulties accumulate more and more as I approach that part of it which now remains. While Time is sprinkling his snows upon many of our heads, he deepens the shade over the memorials of our predecessors. I have solicited from many members of the bar, and from other gentlemen, at a distance, as well as nearer home, interesting anecdotes of our deceased brethren, with very little—I may almost say, with no success. I owe my thanks however to a few, and am compelled to proceed with the scanty materials I have been able to glean. The names of the honored dead are not forgotten; but the characteristic incidents of their lives are either too faintly remembered, or so much embellished by those to whom tradition has transmitted them, that it is difficult to mark the point of separation between fact and fiction. Much, doubtless, remains among a few cotemporaries, who are removed to places unknown to me, or so distant as to render hopeless any effort to obtain the information they may possess. It is therefore under numerous disadvantages that I make a feeble effort to snatch from oblivion a few reminiscences of those, whose eminently useful labors have entailed a debt of gratitude upon their posterity, and upon ours.

Of Thomas Gorges, the first lawyer in Maine. I have already had occasion to mention all that can now be known. To him we owe the first efforts which were made to stem the torrent of barbarism; and from the time of his return to England, in 1642 or 1643, I have not been able to ascertain the name of any lawyer, whose learning has been made beneficial to our jurisprudence until about 1720, or perhaps later.

Noah Emery, of Kittery, in the county of York, is the first mentioned in our ancient records. He was the great grandfather of Nicholas Emery one of my audience. Mr. Emery was a cooper, and

followed that employment until he became so corpulent as to be unable any longer to pursue it. Being an intelligent and well informed man, and in circumstances which enabled him to undertake the study of law, he entered upon that laborious pursuit. Circumstances would incline us to believe that he had some professional man to point out the course of his studies; but I am not warranted to state this as fact. Aged persons have declared that his legal acquirements were respectable. His last will and testament, which seems to have been drawn by himself, bears the evident stamp of professional ability and skill; and its provisions give him claims, as a man, to our respect. Mr. Emery died early in the year 1762. Of his birth I have not been able to obtain information; but, from the description of his family in his last will, it is to be inferred that he lived to the age of sixty at least.[1]

Caleb Emery, supposed to be a cousin of the preceding, also lived in Kittery, and seems to have succeeded to his professional business. Under whom, or in what manner, he was qualified for the bar I have not been able to learn. I believe the earliest notice of him in the records is in 1761, when he was appointed attorney for

[1] Mr. Willis' 2d Part Hist. of Portland, p. 208, relates an interesting fact, which I presume he obtained from the MSS. of the late Judge Sewall of Maine. The anecdote is as follows: Matthew Livermore commenced a suit in the Inferior Court of York, to which Wm. Shirley of Boston (afterwards governor Shirley) filed a special plea; but special pleading being seldom used in that day, and at that period little understood by the practising attorneys, and much less by the court, the plea was answered *ore tenus*; and the cause went to trial "some how or other." The verdict was for the Plt. and the Dft. appealed to the Superior Court, where the cause went again in favor of the Plt. and an execution issued. The Dft. entered a complaint to the king in council, and an order was issued thereon to set the whole proceedings aside, on account of the defective pleadings in the Inferior Court. The order was addressed to the Superior Court; and Mr. Auchmuty, an able lawyer of Boston, made an earnest application to the court to have the order carried into effect. The court were somewhat perplexed on the occasion; but Mr. Emery, as attorney for the Plt. drew up an answer to Mr. Auchmuty's petition in substance as follows:—that the Superior Court of Judicature was a court constituted by a law of the province, whereby they were authorized to hear and determine such civil matters therein mentioned, as were made cognizable by them, and to render judgment thereon, and to issue execution, pursuant to *their own judgment*, and not otherwise. And if the counsel for the Dft. in this case had obtained a different judgment elsewhere from what appeared from their records, he must go there for his execution, as the court were not by law empowered to issue any execution contrary to the record of their own judgment. The court were satisfied with the answer, and complimented Mr. Emery upon the manner in which he had relieved them from their embarrassment. Mr. Auchmuty acquiesced in the decision of the court.

the king at Oct. term of the Inferior Court in York county. I have learnt nothing more of Mr. Emery than that he was a man of plain manners, principally employed in agricultural pursuits, and that he always sought to be instrumental in effecting a compromise of the differences among his neighbors, and discouraged legal controversies as much as he could, that he was not much employed as an advocate, and that, as abler speakers came forward to attend to the business of the courts, he gradually withdrew himself, declining the practice, because he found himself more happy in the retirement, which agricultural employments afforded.

WILLIAM CUSHING L. L. D. was born in Scituate, in Massachusetts, in March 1723, graduated at Harvard College in 1751, and studied law with Jeremiah Gridley. He settled at Pownalborough, now Dresden, where he practiced with great success. He was the first Judge of Probate in Lincoln county, and was appointed Chief Justice of Massachusetts in 1777, and transferred to the Supreme Court of the United States in 1789, which office he held until his death in 1810. He was Vice-President of the convention of Massachusetts which ratified the Federal Constitution, and presided during great part of the session. It is said that "he was remarkable for the secrecy of his opinions during the revolutionary struggle, and thus was enabled to keep up his reputation with the court and the republican parties. His long life was spent in the public service, and was marked by great industry and integrity; for which it has been said he was even more distinguished than for brilliancy of talents. He was remarkable for great simplicity and purity of manners."[1]

[1] Mr. Willis in his second part of the History of Portland already quoted—(p. 209) states that Mr. Cushing resided with his brother Charles Cushing, the first sheriff of Lincoln, and for many years after the revolution, the clerk of the courts in Suffolk; and that he was the last chief justice, who wore the large wig of the English judges, which gave him upon the bench an air of superior dignity and gravity. To which I will add an anecdote related by Judge Cushing himself to a deceased member of our bar, whom we all knew.

I remember the appearance of Judge Cushing myself. I was very young at the few times when I saw him. It was some years before I entered upon the study of law. I very well remember, and perhaps I may never forget, the strong impression his appearance made upon my mind when I first saw him, as he was walking in a street in Portland. He was a man whose deportment surpassed all the ideas of personal dignity I had ever formed. His professional wig I have no doubt added much to the imposing effect of his external appearance. The anecdote is as follows:

That being in New-York, upon his professional duties, (probably it was his

DAVID SEWALL was born in York in 1735, graduated at Harvard College, in 1755, and pursued his legal studies with Judge Parker of Portsmouth, N. H. He commenced practice about 1759, in his native town, and pursued it with success until he was appointed an associate justice of the Superior Court in 1777. In 1789, he was appointed Judge of the United States' Court for the District of Maine. When Judge Sewall was appointed, and for several years after, the District Court of Maine was clothed with the powers incident to the Circuit Courts, so that capital cases were cognizable before Judge Sewall; and in 1790, there was a trial and conviction for murder and piracy in his court, and he pronounced sentence of death upon the convict, which was executed ; probably this was the first capital conviction in any court of the United States. The character of Judge Sewall is marked by numerous instances of active benevolence. His unassuming deportment, social disposition and amiable manners are proverbially remembered ; and many probably are now living, who once felt the hard pressure of poverty, and have reason to associate the name of Sewall, with grateful feelings, and to bless the memory of a generous benefactor. He died Oct. 22 1825, aged 90.

JOSEPH STOCKBRIDGE was born in August 1737, graduated at Harvard College in 1755. I have not been able to ascertain with whom he studied law. It appears, by the only memorial I find of him, that he practiced law in Maine (probably in North-Yarmouth or Falmouth) in 1760, and part of 1761. He had little opportunity to exhibit his talents and acquirements, for he died within a year

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first appearance in that city) he wore his wig as usual, unconscious that its appearance was singular ; and while walking in a street of that city, he noticed that about a hundred boys followed him, with marked attention and perfect silence. He thought it singular, but the incident excited but little of his notice. At length, turning a corner, he was met by as many more, who turned around to another crowd behind them, and exclaimed Hurrah ! here he is !! This could not but excite more of his attention, and although it was apparent that he was the subject of the exclamation, he was utterly at a loss to divine the cause of it ; but a sailor passing accidentally, and noticing the crowd, soon directed his eyes to the object of their attention. The sailor too was astonished, and involuntarily exclaimed—my eyes, what a wig ! Judge Cushing was now let into the secret which had puzzled him, and he returned to his lodgings by the shortest way, sent for a peruke maker, and immediately procured a more fashionable covering for his head. He never afterwards wore the professional wig.

after he commenced the practice. Mr. Stockbridge was the first Register of Probate in this county.[1]

Matthew Livermore of Portsmouth N. H. practiced many years at the courts in Maine, in York and in Cumberland counties; but he resided in New-Hampshire. He graduated at Harvard College in 1722. I have not ascertained where he studied law. He was employed as counsel in many suits before any gentleman I have mentioned, except Noah Emery, who was his contemporary many years. He was a respectable lawyer in Portsmouth before 1749, and from the annals of Portsmouth I learn that he was attorney general of that province in 1755. He was the father of

Samuel Livermore, who graduated at Nassau College, as I have understood, but am unable to state when; neither have I learnt where he studied law,—probably it was with his father. He also became eminent in the profession, and was appointed a Justice of the Superior Court of New-Hampshire in 1792, and was its Chief Justice several years. He was elected a member of the Senate of the United States in 1793, and continued a member of that body eight years. He was the father of Edward St. Loe Livermore, and of Arthur Livermore, both of whom were justices, and the latter chief justice, of the Superior Court of New-Hampshire. His name is more frequent in our courts, where he was employed as senior counsel, than that of his father.

Daniel Farnum, of Newbury, Massachusetts, was a lawyer of very respectable standing, who practiced in York county at an early period. I have already noticed that he was appointed in 1760, attorney for the king, at October term of the Inferior Court in York county. He practiced also in Cumberland, and had a considerable practice here from the time when Cumberland county was erected, until the period of the revolution. Mr. Farnum graduated at Harvard College in 1739. I have not ascertained where he was qualified for admission to the bar.

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[1] Newspapers of the day contain the following obituary notice of Mr. Stockbridge. "Falmouth, April 13th, 1761.

On the 5th inst. Mr. Joseph Stockbridge died here, to the great grief of the people in general; for though he had lived here but a few months, his civil, religious and prudent behaviour gained him the esteem of all that knew him, and great satisfaction was expected from his knowledge and capacity in the offices he sustained in the county, and as a good member of society. He was the eldest son of David Stockbridge, Esq. of Hanover, Mass."

JOHN CHIPMAN, another distinguished member of the profession, was early employed as senior counsel in suits instituted by practitioners in Cumberland ; and I believe in York also. Mr. Chipman, while engaged in his professional employment in the court-house, in this county, in July 1768, was unexpectedly seized by a fit of apoplexy, and died within a few hours after the attack. Tradition has not transmitted many particulars concerning him. He was much respected and lamented.[1]

THEOPHILUS BRADBURY of Newbury, Massachusetts, graduated at Harvard College in 1757. I have not ascertained where he pursued his legal studies. He was admitted to the bar at the first term of the Inferior Court in Cumberland county in 1761, and immediately afterwards entered into practice in Portland. Mr. Bradbury instructed a school in Portland, while he was a student ;—hence I suppose he studied law here ; perhaps under the direction of Wm. Cushing. Mr. Bradbury entered immediately into an extensive and successful practice, and soon became eminent both as a counsellor and as an advocate. He remained in Portland until the war of the revolution, when he removed for a short time to Windham, and thence, soon after, to Newburyport, where his reputation followed him, and he was eminently successful. Mr. Bradbury still continued to attend the courts in Cumberland, and was engaged as senior counsel in most of the important trials. In 1763, he was appointed a collector of the excise, and discharged the duties of that office several years in Portland. In 1796, he was elected a member of congress in Essex county, Massachusetts; and in 1797, he was appointed an associate justice of the Supreme Judicial Court. He died in 1803, at the age of 64.

DAVID WYER, born in Charlestown, Mass. was the son of a shipmaster. He graduated at Harvard College in 1758. I know not where he studied law ; but as he taught a school in Portland before his admission, it may perhaps be presumed that he was qualified for the bar by some gentleman in Maine. Some have supposed however

[1] Mr. Willis in his 2nd Part of the History of Portland already quoted, p. 212, says Mr. Chipman was the son of the Rev. John Chipman, and father of the late Ward Chipman, of New-Brunswick, agent for the British government in the controversy with the United States on the boundary line, and grandfather of the present Judge Chipman of the same province ; and that he graduated at Harvard College in 1738.

that he pursued his studies under the direction of James Otis. He was admitted to the practice of law at October term of the Inferior Court in Cumberland in 1762—and yet it appears by the records that he conducted a suit against Mr. Bradbury at May term of the same year. This however is not matter of surprise, when we recollect that gentlemen, who never regularly studied law, had long been permitted (and the practice was not yet checked) to manage causes in court.

Until the revolution Mr. Wyer was engaged against Mr. Bradbury in almost all the contested suits originated in Cumberland. These gentlemen were of very different characters. Mr. Bradbury was grave, solid and dignified. Mr. Wyer was full of gaiety, wit and satire. This diversity often produced collisions between them which afforded much amusement to their friends and to the auditors in the court-room ; and seldom failed to unbend the gravity of the judges. Mr. Wyer was a respectable lawyer, an eloquent and able advocate. He was also a man of talents and of integrity, firm and independent in his character, and in his opinions. There were other diversities between these opposites in the forum. Mr. Wyer was a royalist, Mr. Bradbury a republican. The former was a warm and zealous supporter of the episcopal church, while the latter was attached with equal firmness to the cause of congregationalism. These were additional excitements to the war of argument, wit and satire, which produced much more mirth to their friends than even momentary anger between the contending champions. Mr. Wyer died at Westbrook in 1776, aged about 36 years.[1]

John Sullivan L. L. D. received the rudiments of his education from his father, who came from Ireland about 1723, and being versed in the classics was some years employed as a school-master. Except what Mr. Sullivan owed to his father's instructions, he may

[1] I have the following anecdote of Mr. Wyer from one of his contemporaries. While he was engaged in the argument of a cause, at the Inferior Court, one of the judges, who understood much more of his private business and occupations than of the science of law, interrupted Mr. Wyer, in the midst of his argument, with some observations which the advocate did not understand, and was unable to perceive their tendency ; but he very adroitly replied I am glad to find that your Honour's opinion co-incides with my own. You are altogether wrong Mr. Wyer, said the Judge ; my opinion is directly against you. That, replied Wyer, does not lessen my happiness in the least, may it please your honour.

be called a self-educated man. His father settled in Berwick, in the county of York, where he lived to the uncommon age of 105 years. Mr. Sullivan received an honorary degree of A. B. from Harvard College in 1758, and at subsequent periods, those of A. M. and L.L.D. from the same seminary. He was a firm friend and zealous supporter of the cause of the revolution. He served with reputation in many military offices, and rose to the rank of Brigadier General in actual service. He sustained all his military appointments with zeal, undoubted courage, good conduct, ability and talent. This gentleman practiced law in York and in Cumberland, but principally in York, with much success. I find his name on the clerk's docquet in Cumberland as early as 1766. He sustained important civil offices also with equal ability. In 1774, he was a member of the first provincial Congress. In 1786, 1787 and 1789 he was President of New-Hampshire, and in 1792, he assisted in forming the constitution of that State. Mr. Sullivan commenced his practice as a lawyer in Durham, N. H. I have not been able to ascertain where he pursued his legal studies. He died in 1795, aged 55.

James Sullivan L. L. D. brother of General John Sullivan, was born in Berwick, April 22, 1744. He also received the rudiments of his education from his father. He was destined to a military life ; but a fracture of his limbs in youth prevented that, and he pursued the study of law in the office of his brother. When qualified for the bar he entered into the practice, and soon rose to superiority and eminence in the profession. He commenced practice in Georgetown. The first mention of his name on the clerk's docquet of this county, I believe is at April term 1769. In this year he removed to Biddeford. He also, at the opening of the revolution, took a decided part in favor of republicanism, and was a member of the provincial Congress in 1775. He was appointed an associate justice of the Superior Court of Massachusetts in 1778, which office he resigned in 1782. He was a member of the convention which formed the constitution of Massachusetts. In 1783 he was elected to a seat in Congress. He was one of the commissioners appointed to settle the controversy between Massachusetts and New-York, respecting their claims to the western lands. In 1787 he was a member of the executive council of the State of Massachusetts, and Judge of Pro-

bate for Suffolk county. In 1790 he was appointed Attorney General of Massachusetts. In 1796 he was appointed one of the commissioners to settle the boundaries between the United States and the British provinces. He was chosen governor of Massachusetts in 1808 and 1809; during which latter year he died, on the 10th December, in the 65th year of his age.[1]

[1]Tradition has transmitted an anecdote of the two Sullivans, which, while it exhibits a view of the rude and uncultivated state of society around them when they commenced their career, is at the same time characteristic of our distinguished brethren, and honorable to their memory. When John Sullivan established himself in Durham, where his brother James studied law with him, the mass of population there rose in a mob, and, armed with dangerous weapons, tumultuously declared, that they would have no d****d lawyers settled among them, and ordered them to decamp immediately. While they surrounded Mr. Sullivan's house in this riotous manner, the elder brother went out and demanded a parley. He told them that he did not come there to do them harm, or disturb their quiet in any way, but to render them any services which might be in his power,—that he hoped to live peaceably among them, and that they would live peaceably among themselves; but at the same time assured them that he considered himself to have as good a right to move into that settlement as they had; that he was not to be intimidated by any threats, or by any dangers, which might assail him; that they might assure themselves he should not remove except at his own pleasure, and advised them to go home and conduct themselves peaceably. But his remonstrance was in vain, and the fury of the mob increased. They pressed so closely upon him, that a regard for his personal safety urged him to retire into his house and fasten the door. The brothers were in a dangerous situation;—an infuriated mob, armed with deadly weapons, threatened loudly to force the feeble barrier of their protection, while they abused them with all the irritating language which frenzy could dictate. The mob declared that they had chosen a champion, and if either of the brothers would engage him in battle, and should prevail in the contest, the rest would retire and leave them unmolested; but if their champion should gain the victory, they should instantly leave the settlement, or their lives would be in peril. As might be expected, the brothers paid little regard to all this until they saw the ruffians close around the house, and expected every moment it would be forced, and themselves exposed to their fury. A friendly contest then arose between the brothers. John told James he would go out and engage in the contest; but James objected, urging that his brother had a family, to whom his discomfiture would be a serious injury; while he, having no family to provide for, his defeat could only injure himself. No, said John, you, James, are mutilated in your limbs, and are unable to cope with their athletic champion, and I am able to do it. James replied, that he did not fear the issue, and persisted, and at length prevailed. He looked out of the window, and took careful notice of their formidable weapons;—paused a moment, while he recollected there was nothing to match them in the house; but casting his eye upon a pair of kitchen tongs, he seized them, opened the door, and advanced towards them with an undaunted air, brandishing his formidable weapon with great dexterity. As he drew near the assailants they gave way, and demanded that he should lay down the tongs, and engage their champion. He immediately did so, and the bully of the mob came forward to meet him. The man who related this anecdote to one of my auditors, was a contemporary,—and he concluded his relation with great glee, and as near as can be remembered, as follows: "And by hokey,

THEOPHILUS PARSONS L. L. D. was born in Byfield, Mass. February 24th 1750, and graduated at Harvard College 1768, with a high and well merited reputation. He studied law in the office of Theophilus Bradbury, and instructed a school in Portland while he was pursuing his legal studies; and it is said, that even while a schoolmaster, as well as afterwards, he employed every moment of his leisure to qualify himself for that unrivalled eminence to which he was destined to arrive, and which distinguished him among all his contemporaries by the appellation of the giant of the law. Mr. Parsons was admitted to the bar in 1774, in the county of Cumberland, and practiced first in Portland, but in the latter part of 1776 he removed to Newburyport, Mass. but still continued to practice in the courts in Cumberland, where he was often employed to oppose his legal preceptor. He was one of the committee of safety in ancient Falmouth (now Portland) in 1775, at the age of about 24 in conjunction with others all of whom were several years his seniors. In 1777 he was one of the delegates of the county of Essex to consider the constitution formed by the legislature, and drew up the celebrated report called the Essex Result. And in 1780 he was a member of the convention which formed the constitution of the State of Massachusetts, which was afterwards adopted, and he was one of the most efficient members of that body. He was also one of the convention which accepted the constitution of the United States, and exerted a powerful and beneficial influence to procure its adoption. In 1800 he removed to Boston, where, among many able and distinguished lawyers, he held the first rank. In 1806 he was appointed Chief Justice of Massachusetts, and continued in that office until his death, in September 1813, in the 63d year of his age. To state that Mr. Parsons' legal learning and talents were unrivalled among those who

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the young lawyer, with broken legs, beat the stout fellow right and left, and all 'round, to his heart's content, till he cried enough. He then took up the tongs and went towards the rest of the gang, calling them cowardly blackguards, and bid them come forward one at a time, or all together, and he was their match; but fackins they quailed, and gave way as fast as he came forward. He then went back, and the fellows were so ashamed that pretty soon after they went to the house, knocked civilly, and went in, and told the two brothers that they were good hearty fellows, and should stay among them as long as they pleased."

The unusual degree of popularity which both the brothers very soon acquired, and always retained, shows that this perilious adventure ultimately turned out to their advantage.

were of distinguished eminence in the profession is but to point out one trait in his character. He was a universal scholar, and eminent in most branches of learning. It is remarked of him, that when in company with eminent men, in different branches of science, he always conversed upon the particular science to which each had principally devoted his studies. To the learned divine he always exhibited a deep and profound knowledge of theology. With the professor of mathematics he could always enter at once upon the most abstruse branches of that science, and manifest to his astonished auditor a depth of learning to which many professors never arrive. Few metaphysicians would dare to enter the lists of controversy with him. If the subject of conversation were anatomy, medicine, chemistry, natural philosophy or natural history, Mr. Parsons was always at home, always profound. He appeared to be acquainted with all the minutiæ of mechanical employments ; and nothing useful which passed under his notice escaped the critical examination of a mind which, as if by intuition, seemed at once to penetrate all its principles, and all its ramifications. But to delineate the character of Mr. Parsons, would be impossible in the brief limits of this opportunity, and could I enlarge them to my utmost wishes, I should scarcely dare to attempt it. It has already been essayed by the abler pen of the late Chief Justice Parker.[1]

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[1] I recollect an anecdote of Mr. Parsons while he was at the bar. He was journeying on horse-back (the only mode of travelling at that period) to a court in the interior of Massachusetts, and discovered when he was near a blacksmith's shop that his horse had a shoe loose. He stopped to have it secured, and while the blacksmith was preparing his fire and collecting his tools, Mr. Parsons entered into conversation with him upon subjects relating to his trade, and continued the conversation until he recollected that his stirrup leathers were not in good order ; and seeing a shoe-maker's shop opposite, he took them off, and carried them to the shoe-maker to be repaired ; and while there he discoursed very familiarly with the shoe-maker upon the various subjects of his vocation. When the jobs were done, and Mr. P. had departed, the blacksmith came over and enquired of his neighbor if he knew that man. He replied that he did not ;—all I know of him, said he, is, that he is a shoe-maker, who well understands the trade. He a shoe-maker ! said the blacksmith, not he—if he is not a blacksmith there is not a blacksmith in the world, and I would give half of what I am worth to be able to shoe a horse as well as he can.

I will add another which happened under my own observation. A curious question in the law of insurance arose when Chief Justice Parsons was on the bench. A ship having had a constant succession of favorable weather safely performed a voyage which was insured ; yet a question arose whether she was sea-worthy. The suit was brought to recover back the premium. In the

TIMOTHY LANGDON lived in Wiscasset—how early I am not able to ascertain ; nor where he pursued his professional studies. He graduated at Harvard College in 1765. He evidently acquired rep-

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course of the trial several ship-wrights were called as witnesses to testify concerning the alleged defect, which was the want of a bolt in a certain place to secure properly a particular part of the body of the ship. The witnesses were not all agreed in the necessity of the bolt to render the ship seaworthy. There was much testimony concerning tree-nailing, spiking and bolting; and one ship-wright, who was considered more experienced than the rest, entered into a minute description of the part of the ship under consideration, and stated that it ought to be tree-nailed in one place, spiked in one or two others, and bolted in a third, giving his reasons for each ; but his testimony through an inadvertency placed the bolt in the wrong place. The testimony was not clearly understood by either of the counsel, and they did not discover the mistake of the witness ; but the Chief Justice instantly perceived the error. He then stated to the witness that he had always supposed that the part of the ship in question was tree-nailed, spiked and bolted in a particular manner, which he clearly and minutely explained, and pointed out the necessity, and the advantages of each ; but, he added, since you are an experienced ship-wright, you must know best, and I must have entertained an incorrect opinion. No Sir, replied the witness, your honor has stated it aright, and if I did not say so, it was because I spoke in too much haste about it. He then described it again and corrected the error of his previous description and testimony. The Chief Justice said, I am convinced from your more deliberate testimony that my former opinion was well founded, but had you, or any other experienced artist declared the contrary, I should certainly have yielded an opinion which I have some how or other picked up, upon a subject I do not understand.

The late Sol. General of Massachusetts, who was engaged in the cause, whispered to some one near him—"hear how that modest old fellow lies ;—he knows well enough, that there is not a man in the Commonwealth who can build a ship so well as himself."

One of Justice Parsons' scholars in Portland, related to me the following anecdote—that when he commenced his school he told the boys that the first rule he required them to remember was this: Never attempt two things at once—that the second was "the studying law," which provided a punishment for every boy who looked into his books or conned over his lesson, during the time allotted for play and relaxation. A third was called "the idling law," which provided a punishment in every case where a boy suffered his eye to wander from his book while the law was in force. When he dismissed his scholars for a short recreation, he proclaimed *the studying law*, which declared all study an offence. The usual recreation was foot-ball, in which the master joined with his scholars with great glee ; and once in eager pursuit he stumbled and fell down, and a boy ran over him, before he recognized his master, to his great terror. The boy stopped, and with tears in his eyes began to make his excuses. Run on, you rogue, said Mr. Parsons, never mind me—we are all boys together now. When the time allotted to recreation expired, he laughed among them over the incident which had happened, and his mirth continued until he took his place. He then said, I am master now, boys—and the idling law is in force. His scholars loved and revered him, yet he suffered no breaches of the idling, or the studying law to escape an appropriate punishment.

The late Doct. Deane was a minute observer of Mr. Parsons, and held him in very high estimation. He once said in a circle of friends, speaking of Mr. P. if that youth lives, he will be one of the first men the country has ever produced. The Doctor lived to see his prediction verified.

utation in the profession, for in 1778 the provincial Congress appointed him Judge of the Maritime Court for the district of Maine. He was in practice in Maine after he ceased to be a judge; but I have not succeeded in my efforts to ascertain his subsequent history.

I know not whether I ought, or ought not, to introduce

Ezra Taylor, who was of Southborough, Mass. and practiced law there from 1751 until the period of the revolution, and during that period had a very extensive practice. All I have learnt of him is derived from Mr. Willard's address to the bar of the county of Worcester. p. 63. Mr. Willard states, that for some years he was one of those who prepared causes for the court, and then engaged the aid of other gentlemen to conduct them at the bar; that he does not know whether he was regularly educated or not; but from certain circumstances, and among others, that he was a family connection of Judge Trowbridge, he inclines to the belief that he was regularly educated; and during the times of the revolution, he removed to Gardiner, in Maine, where he practiced law, and died at a very advanced age. I have sought information relative to Mr. Taylor from several gentlemen in that vicinity; but I have received none.[1]

Royal Tyler graduated at Harvard College in 1776, and probably pursued his legal studies in Boston or Charlestown. I presume he was admitted in Massachusetts. He came to Portland in 1779, and commenced practice here; but remained only about two years. Mr. Tyler was a fine scholar, and an accomplished man. He had no opportunity to display his professional learning and talents in the short time he remained here, and more especially, because during that period there was little or nothing done in our courts; but his merits and qualifications as a lawyer were such as to elevate him afterwards to the office of Chief Justice of Vermont, and the profession is indebted to him for two volumes of reports of the supreme court of that State.[2]

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[1] I have examined the copious index contained in Mr. Willis's second part of the History of Portland, and do not find Mr. Taylor's name there. If he ever resided in Maine, I think the enquiries I have made ought to have procured me some intelligence concerning him; and perhaps Mr. Willis has made similar enquiries; if so, he seems to have been equally unsuccessful. But I cannot suppose that Mr. Willard has given us his account of Mr. Taylor without authority.

[2] An incident, relative to Mr. Tyler, somewhat ludicrous, has come to my knowledge. He commenced a suit against an officer of a privateer, then in

JOHN FROTHINGHAM was born in Charlestown, graduated at Harvard College in 1771, pursued his legal studies with Mr. Bradbury, in whose office he was a fellow student with Theophilus Parsons. Mr. Frothingham was admitted to the bar in the Inferior Court in Cumberland at March term 1779. There was so little practice at that period, that he united with his professional employment the duties of a school-master for several years. Mr. Frothingham was appointed inspector of excise for Maine district. He pursued his practice as a lawyer with the confidence of his clients for several years. In 1804, he was appointed a justice of the Court of Common Pleas, which office he held until the late Circuit Court of Common Pleas was organized, a period of eight or nine years. He held several other offices and faithfully discharged their duties. It is an unequivocal proof of the confidence, which those who best knew him, reposed in Mr. Frothingham, that he held the office of town clerk more than thirty years, and he was representative of Portland in the legislature of Massachusetts in 1786. He was Register of Probate ten or twelve years. During several of his last years he was blind. Mr. Frothingham always sustained the character of an amiable and an honest man; and what is more, he deserved it. He died in 1826.

GEORGE THACHER graduated at Harvard College in 1776, and pursued his legal studies with Shearjashub Bourne of Barnstable, Mass. He was employed as a school-master some months before he entered upon the practice of law. He opened an office first in York in 1780 or 1781, and in 1782 removed to Biddeford, where he remained during the whole period of his professional career. Mr. Thacher very soon acquired an extensive practice in York and Cumberland counties, and was a popular and successful advocate. He was a learned lawyer, and a man of general science, whose treasures he was always able to call up very successfully to aid him in illustra-

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Portland harbor, and went with a deputy sheriff to point out the man that he might be arrested. This seems to have been accomplished on board the privateer; but the officer, not regarding the civil authority so well as was expected, immediately put to sea with the lawyer and the deputy sheriff on board, and landing them at Townsend (out of the county) left them there to find their way home as they could. I heard this anecdote from a relative of the person arrested; but as all the relations of the latter were members of the society of friends, and he was himself brought up among them,—my informant, a very respectable member of that society, declined mentioning any name while he related the story; and I am not disposed to violate what perhaps I ought to consider an implied confidence of secrecy.

tion, and in argument. In this it has been said he excelled all his competitors. Mr. Thacher had a very extensive library, of which his great industry enabled him to make a very profitable use. It is remarkable that a man so much devoted to reading and study should not have acquired the unsocial habits which are generally considered the necessary consequence of a close attention to learned pursuits ; but Mr. Thacher never suffered his devotion to books to interfere with the claims of his friends ; and he could immediately break off from the most abstruse subjects of meditation when a friend called upon him ; and at once enter into social conversation, for which he was highly talented ; and with a wit, humor and satire, which never failed him, and which was peculiarly his own, he ever amused and delighted his auditors, while at the same time they seldom failed of receiving instruction. There was a spice of irony in his wit and humor that marked his character with a degree of eccentricity, which he was always able to turn to good account. But it is impossible to delineate such a character to the life ; for it was original. Mr. Thacher always enjoyed the confidence of his friends, and of the public also, in an extraordinary degree. He was elected a delegate to Congress before the adoption of the Federal Constitution, and was afterwards successively elected by the people of his district until 1801, when he was appointed an associate justice of the Supreme Judicial Court, and he resigned his seat in Congress. Judge Thacher retained his seat on the bench after the separation of Maine, for before that event he removed to Newburyport, where he remained until January 1824. He then resigned his office, and returned to Biddeford, where he died in April of the same year.

In his private life, Mr. Thacher was remarkably benevolent, social and hospitable. No man sought more earnestly to render his friends happy around him ; and although the eccentricity of his humor, wit and satire never forsook him, and never failed of its appropriate effect ; yet it seldom wounded the feelings of those who excited it ; for although the laugh was always against them, the well known benevolence of the man, and a redeeming trait in the satire itself, almost always compelled its objects to join heartily in the laugh against themselves.[1]

[1] Of the numerous characteristic reminiscences of Judge Thacher, all *fraught with* mirth and laughter, which crowd upon my memory, I select one ;

SILAS LEE was graduated at Harvard College in 1784, pursued his legal studies in the office of Judge Thacher, and settled at Wiscasset, in the county of Lincoln, and had an extensive practice in Lincoln and Cumberland counties. Mr. Lee was an industrious man in every thing he undertook. He read law with great industry, and with success. He was an able special pleader among his competitors; and was sometimes considered rather astute in his practice. Mr. Lee was often eloquent at the bar, but his eloquence was rapid; and, although learned in the law, his powers, as an advocate, were not always answerable to the merits of the cause he espoused. But Mr. Lee was a learned lawyer, who never failed to investigate his

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because I believe it is the earliest, and therefore might perhaps be the soonest forgotten. While he was a member of the house of representatives of the United States, a bill was reported upon the subject of American coins, which made provision that one side of them should bear the impression of an eagle. Mr. Thacher moved an amendment;—that the word *eagle* should be stricken out wherever it was contained in the bill, and the word *goose* substituted. He rose to support his amendment, and with great gravity, stated that the eagle was an emblem of royalty; and had always been so considered. It is a royal bird, Mr. Speaker, said he, and the idea that it should be impressed upon our coinage is inexpressibly shocking to my republican feelings. Sir, it would be grossly inconsistent with our national character. But the goose, Sir, is a republican bird;—the fit and appropriate emblem of republicanism. Ever since I have been acquainted with classic lore, Sir, I have remembered, with ever new satisfaction, that it was the cackling of a flock of these republicans, which saved the greatest city in the world;—and always since, I have felt disposed to greet every goose I have seen as a brother republican. These reasons, Sir, upon which I could enlarge very much, are, in my view, conclusive in favor of the amendment proposed, and I hope our dollars will bear the impression of a goose; and the goslins may be put upon the ten cent pieces. When the amendment was proposed, every countenance was relaxed into a smile; but, as Mr. Thacher proceeded to state his reasons, there was a universal peal of laughter—loud—and long. Unhappily, the member, who reported the bill thought that all the laugh was pointed at him;—and the next day he sent a friend to Mr. Thacher with a challenge. When the message was delivered, and the reason of the challenge communicated, Mr. Thacher replied —tell him I wont fight. But, Mr. Thacher, said the other, what will the world say if you refuse;—they may call you a coward. A coward, said Mr. Thacher, why so I am;—he knows that, very well, otherwise he would never have challenged me. Tell him, said Mr. Thacher, that I have a wife and children, who have a deep interest in my life; and I cannot put it in such danger without their consent. I will write to them, and if they consent, I will accept his challenge. But no;—he added, you need not say that;—tell him to mark out a figure, of my size, upon some wall, and then go off to the *honorable* distance and fire at it;—and if he hits within the mark, I will acknowledge that if I had been there—he would have hit me. The gentleman laughed as loud as he did the day before in the house. He returned to the challenger, and told him he had better let Mr. Thacher alone, for he believed that, if they should fight, and Mr. Thacher should be killed, he would, in some way or other, contrive to raise a laugh against him, as long as he lived. By the interference of this gentleman the point of *honor* was abandoned.

causes well. He was the representative of Wiscasset (I believe) in the year 1794 (perhaps subsequently). He was a representative in Congress in 1801 and 1802. Mr. Lee's qualifications and pretensions, procured his appointment as attorney of the United States in the district of Maine in 1802, and he held that office until his death in 1815. He was appointed Chief Justice of the Court of Common Pleas in Lincoln in 1811, and held that office one year. He also held the office of judge of probate in Lincoln from 1805 until 1815.

SALMON CHASE was born in Cornish, N. H. graduated at Dartmouth College in 1785, and pursued his studies with Judge Sherborne of Portsmouth, N. H. He came to Portland in 1789, was admitted to the bar in this county at October term of the Court of Common Pleas in that year, and immediately commenced his practice here, and continued until his death, August 10th 1806, at the age of 45. Mr. Chase was not only an able lawyer, but he was well versed in all the branches of solid learning. He was not distinguished as a *belles lettres* scholar; but in legal science, in mathematical and metaphysical learning, he had few superiors. He rose to high rank in his profession; but he was much more distinguished as a learned and safe counsellor than as an advocate. In the social circle few were able to cope with Mr. Chase in argument upon the various subjects of his learning; but he was not equally successful when he exercised his talents as an advocate at the bar.[1]

Mr. Chase's practice was much more extensive than that of any of his contemporaries; and he was the only member of the Cumberland bar, within my knowledge, who acquired a handsome estate by the practice of law. He always enjoyed the unbounded confidence of his clients, and his death was much lamented by the community.

[1] I was young at the bar in Mr. Chase's day; but I thought I knew him well, and I ascribed this trait in his character, which surprized all who were able to estimate his learning and talents, which were certainly of a high order, to a defective nervous temperament. Mr. Chase was so sensible of it himself, that he often conversed upon the subject, and I have heard him attempt to describe it. He said once that he had often fully investigated both sides of a cause in which he was engaged, and meditated his argument until he had reduced it to a plain demonstration; but it generally happened that some trivial incident, or some cross accident, threw all his ideas into the utmost disorder. He could compare it to nothing else than the impatient rushing of a multitude of boys out of school in the utmost confusion, defying all rules of order, and with tumultuous hurry, tripping up each others heels. But Mr. Chase was held by all his contemporaries in very high respect as a lawyer, and was by many familiarly called the "great gun" of the Cumberland bar.

Mr. Chase was one of the commissioners of bankruptcy under the statute of the United States. I believe he held no other public office. He was not an office-seeker.

Samuel Cooper Johonnot was born in Boston, graduated at Harvard College in 1783, after which he spent some considerable time in Europe. He pursued his legal studies in the office of Judge Sullivan, in Boston. He was admitted to the bar in the county of Suffolk; and I find the following notice in the records of the Court of Common Pleas in this county at October term 1789. "Mr. Samuel Cooper Johonnot is also admitted an attorney in this court, the present term; he having assured the court that he has been regularly admitted an attorney in the Court of Common Pleas, in the county of Suffolk, credentials of which he will produce." He possessed great wit, and vivacity, with much literary talent. His satirical powers rendered him dangerous to those who fell under his censure or displeasure; and ultimately proved injurious to himself; for entering into a newspaper quarrel upon the subject of a political election, his satire bore very severely upon several of the most considerable persons in Portland; and their resentment rendered his longer stay so perilous that he found it necessary to make a hasty removal. His talents promised much in his favor as an advocate;—what he might have become as a lawyer he had not sufficient opportunity to prove, for he resided here only about two years. Mr. Johonnot afterwards removed to Demarara, where he was appointed American consul, and accumulated a handsome estate in commercial pursuits.

William Symmes, son of the Rev. Mr. Symmes of Andover, graduated at Harvard College in 1779. He pursued his legal studies in the county of Essex, in Massachusetts, and was admitted to the bar in that county; his admission was recognized by the Court of Common Pleas in this county, at October term 1790, when he came to Portland,—entered into practice, and continued here until his death in January 1807.

Mr. Symmes was a member of the convention which adopted the federal constitution, to which he had been opposed as were his constituents, the inhabitants of Andover, who had instructed him to vote against its adoption; but after hearing the able arguments in its favor, in that learned body, he was fully convinced of the error of that

opinion and magnanimously resolved not to oppose it. After a few days he returned to his constituents, and called together several of the most influential among them; and to them he recapitulated the arguments, which had so thoroughly convinced him of his former errors. He told them he could no longer conscientiously oppose the constitution, that he was ready to resign his appointment, and proposed the call of another town meeting for the choice of his successor. This honorable course could not fail to excite their unqualified approbation. They took time to consider of the subject, to deliberate upon, and to weigh the arguments, which had convinced their delegate, and after a pretty general consultation of the people of Andover, several were brought to relinquish their former prejudices, many wavered—and at length they came to him, authorized by a large portion of the people, and told him they should not call another meeting, nor would they restrain his vote—desired him to return to the convention, and act according to the dictates of his conscience, and they would acquiesce in the result. He did so, and at a proper time, addressed a speech to that learned body in which he very ably stated his former opinions and the instructions of his constituents—his gradual, and at length full conviction that those opinions were erroneous, and his resolution to act according to his more enlightened views of the important subject; and that he was so happy as to be relieved, by his constituents themselves, of all restraints upon the free dictates of his reason and his conscience. It is unnecessary to state how he voted. Mr. Symmes was a well read lawyer, and an able and eloquent advocate. He ranked among the first of his contemporaries. He was also a fine classical scholar, of cultivated literary taste, and uncommonly learned as a historian. Mr. Symmes's productions in the newspapers of the time were an honorable testimony to his literary character, particularly a series of numbers entitled "Communications," about the year 1795, in defence of the common law against the political fanatics of that period who sought to destroy that mighty fabric which condenses the wisdom and the experience of ages. These numbers were republished in the principal newspapers throughout the union. Mr. Symmes, with Judge Thacher, and two or three others, rendered the newspapers of this period very interesting by their valuable contributions.

I may, perhaps, be chargeable with important omissions. There are floating traditions that William Parker of Portsmouth, Jeremiah Gridley, John Adams, late President of the United States, Jonathan Sewall, and I believe some others practiced law in the courts of this county; but I know not on what authority the opinion is founded. I think I should have noticed such names had they appeared in the docquets of the Inferior Court, and I do not remember to have seen them there. It is possible however that the names of senior counsel were not usually minuted; or, possibly, they may have practiced only in the Superior Court, whose records of that period I have not seen. Under these circumstances I am not able to consider these distinguished gentlemen as coming within the plan of this address.[1]

Another distinguished member of the profession, William Lithgow, Esq. of Georgetown, who was the first attorney of the United States for the district of Maine, and practiced in the District Court,

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[1] Mr. Willis, however, in his work already quoted p. 212, states that all these gentlemen did practice in Cumberland before the revolution; but he does not give us his authority. Perhaps he owes the information to the late Judge Sewall's manuscripts. If so it is sufficiently warranted; and it cannot be supposed that Mr. Willis is unsupported by proper authority.

I insert his notes 4, 5, 6, in page 212. Mr. Gridley graduated at H. C. 1725; he was a sound and acute lawyer, was the Attorney General of Mass. and died Sept. 10, 1767.

Mr. Sewall succeeded Mr. Gridley as Attorney General in 1767; he graduated at H. C. in 1748, but did not enter upon practice until 1757, having in the mean time kept a school in Salem. At the commencement of the difficulties with the mother country, he was caressed over to the royal party and a new office, the "King's solicitor" was created expressly for him. He was a good lawyer and advocate, and had a fund of wit and satire always at command, which he employed at the bar, and in political controversy. He maintained a discussion in the papers in 1774 and 1775 under the name of Massachusettensis with John Adams, in which the principal subjects of disagreement with Great Britain were ably handled. He retired to England in 1775, and settled in Bristol.

Mr. Adams attended the court here twelve successive years prior to the revolution, and boarded with Jonathan Webb. Jonathan Sewall and Mr. Adams were intimate friends until the crisis in American politics took place. Finding they could not change each others views, they determined not to discuss the subject any more. This resolution was taken in this town when the court was sitting in July 1774; they were walking upon Munjoy's hill before breakfast and earnestly discussing the great questions which were then agitating the country. The conversation terminated by Mr. Adams saying, "I see we must part; and with a bleeding heart I say it, I fear forever; but you may depend upon it, that this adieu is the sharpest thorn on which I ever set my foot." After their parting here, they did not meet again until Mr. Adams called upon him in London, in 1788, as the Ambassador of the free American States.

alternately held in Portland, is not embraced in my plan, inasmuch as his other practice was in Lincoln, and not in Cumberland.

Isaac Parker was born in Boston in 1768, graduated at Harvard College in 1786, and pursued his legal studies in the office of Wm. Tudor of Boston. He commenced at Castine, in the county of Hancock, where he very soon acquired an extensive practice, and a high and well merited reputation. During his residence at Castine, he was several times elected a representative to the legislature of Massachusetts ; and once, I believe, to its senate. In 1796 he was elected a representative of his district to the house of representatives of the United States ; but in the autumn of 1798, he declined a re-election. In 1799 he was appointed Marshal of Maine District, which office he continued to hold until 1804, when he was removed by President Jefferson. He left Castine, and settled in Portland in 1799, where he continued,and enjoyed an extensive and successful practice until 1806. He was then appointed an associate justice of the Supreme Judicial Court, and in 1807 he removed to Boston. He succeeded to the office of chief justice of that court, vacated by the death of the deeply lamented chief justice Sewall, in 1814, which he held to universal acceptance until his sudden, unexpected and universally lamented death in 1830.

Chief Justice Parker continued to discharge his official duties until the day preceding the apoplectic fit, which occasioned his death. "He was not more distinguished for juridical science than for the uncommon urbanity of his manners, and the intelligence, affability and benevolence which eminently characterized his private life." I have, while preparing these biographical notices, again cast my eye over the sketch of Chief Justice Parker's character so ably pourtrayed by his successor Chief Justice Shaw of Massachusetts, and can with a confirmed confidence repeat, after him, that Chief Justice Parker was entirely free from all affectation and pretension ;—that he merited, and always received the respect, which he never sought ; and which, though it could not fail to be grateful to his feelings, it was never known to excite in him any official pride ; that he was a man of great industry ; and that in the discharge of his official duties he was always cautious and patient ; that although his penetration was lively and accute, yet he never allowed himself to form a hasty opinion ; but

availed himself of all the aids of argument, and all the lights from judicial authority, or the reasonings of others. Some, adds Chief Justice Shaw, have thought that he was apt to lean to the side of equity ; and if it be so, it may be said, with great justice, that *even his failings leaned to virtue's side.*

DUDLEY HUBBARD graduated at Harvard College in 1786, pursued his legal studies with Daniel Davis, at Portland, was admitted to the practice in the county of York, in 1790, and his admission recognized by the Court of Common Pleas in this county, at October term in the same year. Mr. Hubbard settled in Berwick, in the county of York, where he obtained a respectable practice. He occasionally practiced in Cumberland, but not very frequently. Mr. Hubbard was more distinguished as an eloquent advocate than as a profound lawyer. He died about 1816.

JOSEPH THOMAS graduated at Cambridge in 1786—instructed a school in Portland before he commenced his legal studies—studied law in the office of Daniel Davis, late Solicitor General of Massachusetts, and was admitted to the bar in this county at the Court of Common Pleas in May 1792. He settled in Kennebunk, in York county, but occasionally practiced in Cumberland. Mr. Thomas was less distinguished as an advocate than as a counsellor. He was a good lawyer, and his opinions were held in much respect by his seniors in the profession. He possessed a strong mind, and highly respectable acquirements in many branches of learning. Mr. Thomas was so entirely unassuming and unpretending, that his mental acquisitions were generally under-estimated by strangers, who had but little knowledge of the man ; and their estimation of him always rose in proportion as their intimacy increased. With a very solid understanding, he had a quick and ready perception of character ; he was not distinguished for brilliant wit or repartee ; but whenever occasion called forth the discriminating powers of his mind, he was remarkable for being always able by a short, pithy and sound observation, or by some grave but appalling question, instantly to silence any assuming pretender or bold obtruder, and to cover him with shame and confusion. Mr. Thomas died four or five years ago.

JOHN BAGLEY, jr. was born in Portland in 1770 ; pursued his legal studies in the office of Daniel Davis, and was admitted to the

bar in Cumberland, May 1794. He continued in the practice about a year only, and devoted the remainder of his short life to mercantile pursuits. Mr. Bagley died in July 1798, much lamented by a numerous circle of acquaintances and friends.

George Bradbury, son of the late Judge Bradbury, was born in Portland in the year 1770, graduated at Harvard College in 1789, prosecuted his legal studies in the office of his father, and was admitted to the bar in the county of Essex, where he continued several years in the practice. He came to Portland about the year 1803, where he continued to reside until his death in Nov. 1823. Mr. Bradbury, soon after he removed into this county, was appointed attorney for the government in the county of Cumberland, and held the office a few years, and until he resigned it. He was elected member of congress in this district in 1814. He was a member of the Senate in this State in 1822, and was its president during a part of that year. He was appointed a colleague clerk of the Judicial Courts with the late Judge Freeman in 1817, and held the office until the separation of Maine from Massachusetts. But Mr. Bradbury devoted his time principally to mercantile pursuits ; so that it may be almost questionable where he should be included among the members of the Cumberland Bar. He was respected and very highly esteemed by all who knew him. Amiable in private life, and ever affable and faithful in the discharge of his duties in public situations ;—perhaps he never had an enemy. Happy reminiscences will be associated with his name, and long continue to remind us of the universal regret at his sudden and unexpected decease.

John P. Little graduated at College, pursued his legal studies in the office of Timothy Bigelow, at Groton, Mass. and was admitted to practice in Massachusetts in 1799, and to the Supreme Judicial Court in Cumberland, May term 1801. He commenced the practice in Gorham, where he continued until his death in 1809. I have not ascertained where he was graduated. Mr. Little was very industrious and attentive to the duties of his profession. He had an extensive practice and enjoyed the full confidence of his clients and his friends. He was not so much distinguished as a lawyer, or as an advocate, as for his private worth. He was a man of strict integrity, and his moral and social virtues rendered his death

a source of grief to an extensive circle of acquaintances and friends, and a loss to the community.

BENJAMIN ORR graduated at Dartmouth College in 1798, pursued his legal studies in the office of Samuel S. Wilde, now of the Supreme Judicial Court of Massachusetts, was admitted at the Court of Common Pleas in 1801, and at the Supreme Judicial Court September 1803. He commenced the practice of law at Topsham, in the county of Lincoln, and practiced in Lincoln and Cumberland with great celebrity and success, and continued there until his death in September 1828.

Mr. Orr was not a common character; but such a man as a century very rarely produces. I hardly know how to attempt a delineation of him. He had only the advantage of such an education as a country school affords, when he was put as an apprentice to a housewright. But the extraordinary powers of his mind soon discovered themselves, even under such disadvantages, in a surprising degree. He had attended to a very few lessons in English grammar, as it was taught, by rote in questions and answers, but he soon became disgusted with the mode, and convinced of its practical inutility; and he bent his own powerful energies, without any aid from another, to the task of analyzing the English language, which he soon accomplished so successfully, that the rules which he owed to his own efforts alone would stand firm against every objection which his ingenuity could suggest against them; and believing, as others did, that his school-master was well qualified for the duties he had undertaken, the young man thought, and was often heard to say, that public instructors knew nothing of the English language. The entire success of so extraordinary an effort, without foreign aid, could not fail of having a powerful influence upon his after feelings and conduct. He saw himself capable of self-education, and he felt that such an education, when acquired, is the most valuable. It must have excited him to uncommon exertions; and experience had convinced him that his mind was capable of sustaining almost any effort. Perhaps to this incident alone the community are indebted for all the subsequent successful efforts which elevated Mr. Orr, with the cheerful acquiesence of his contemporaries, to the highest rank in the profession. Mr. Orr served out his apprenticeship as a housewright; and there are buildings now standing in this city where his work as

an architect may be seen. It must naturally be supposed that his powerful mind and the energy of his character enabled him to acquire, and to treasure up much valuable knowledge and information during his apprenticeship; but he found that other and new subjects irresistibly solicited his attention during the short period of his residence in Portland, where he had opportunities of comparing his situation with that of others, and where after having been for several days at different times, an attentive auditor of the proceedings in our judicial courts, he was able to estimate the mental powers of public speakers, and to compare them with his own. This resulted in a deliberate resolution to become a lawyer. The difficulties in the way of accomplishing such an object, which would have been considered insurmountable by most men, he did not suffer to appal or discourage him. Hitherto what he had resolved to do, he had found himself able to accomplish, and with characteristic resolution he resolved to accomplish this also. From his father, who had a numerous family, he could not expect pecuniary aid; but he could acquire what was sufficient by the labor of his own hands to defray the expense of fitting himself for college. He succeeded; and he supported himself while in college by the same means, and by the profits of school keeping during the vacations. It required all the aid which his uncommon industry afforded, to support him during the period of his legal studies; but his herculean effort was at length crowned with the most abundant success; and he who but a few years before was a transient spectator in the court room, appearing like a mere rustic, staring at all that he saw, and swallowing every word that he heard, himself "unnoticed and unknown," soon appeared at the bar, as its brightest ornament; and universally regarded as an honor to the State. Happily it is in my power to avail myself of able aid in more particularly describing the character of Mr. Orr. Chief Justice Mellen publicly noticed his death in his charge to the Grand Jury in September 1828, and spoke of him as one "who had long stood confessedly at the head of the profession of our State; who had distinguished himself by the depth and solidity of his understanding; by his legal acumen and research; by the power of his intellect; the commanding energy of his reasoning; the uncompromising firmness of his principles, and the dignified and lofty sense of honor, truth and justice, which he uniformly displayed in his professional career,

and in the walks of private life." An obituary notice of Mr. Orr, from an able pen, which appeared in the newspapers soon after his death, contains another faithful testimonial. Of this also I avail myself gladly.

"At the bar," says this writer, "he was always a pleasant and honorable practitioner, indulgent and obliging towards the younger brethren, and not at all disposed to take advantage of any mistake of theirs arising from want of experience. In his addresses to a jury he would sometimes, it was thought, animadvert with too much severity on a witness who he believed had suppressed the truth, or intentionally prevaricated in his testimony. On such occasions he would pour out his keen and biting satire in short pithy sentences of concentrated sarcasm on the supposed delinquent, while the subject of it would writhe in agony under the chastisement he was receiving. But his powers appeared to most advantage in discussing to the Court points of Law. Here, laying aside all display of wit and sarcasm, all superfluous illustration and circumlocution, all skirmishing at the outposts, and dallying with his adversary, he seized at once upon the question at issue. His argument was dense and brief; proceeding in regular progression from commencement to conclusion; so that it was dangerous for one who would comprehend its full force, to withdraw the attention from him even for a moment."

Mr. Orr's devotion to the duties of the profession he so eminently adorned, was interrupted only by his public duties as a representative to Congress two years. He held no other public office. He never sought any. He died in September 1828.

Nathan Kinsman graduated at Dartmouth College in 1799, and studied law in the office of the late Chief Justice Parker. He was admitted to the bar in this county in 1803, and opened an office in Portland, where he continued until his lamented death in March 1829. Mr. Kinsman had a very extensive practice for many years; and more particularly in the year 1807, and subsequently, in what were commonly called embargo cases, in which he was more employed than all the other lawyers in Maine.

Oliver Bray graduated at Yale College in 1795, commenced his legal studies in Connecticut, and completed them in the office of William Symmes, in Portland; was admitted to the bar in this county in 1804, opened an office in Portland, and continued here until his

death in December 1823. Mr. Bray was so extensively employed as a magistrate, and devoted so much of his time to other pursuits, that he could not attend much to professional duties as a member of the bar.

PETER THACHER pursued his legal studies under the direction of several members of the bar, and completed them in the office of Wm. Symmes. He was admitted in this county in 1804 or 1805, and set himself down in Gorham, his native town, where he followed the practice a few years, and until his death.

SAMUEL WHITMORE jun. graduated at Dartmouth College in 1802, pursued his legal studies in Gorham, his native town, in the office of John P. Little, and was admitted to the bar in 1805. He settled in Gorham ; but he continued in the practice only about three years. He died at an early age, much and deservedly lamented. He was a young man of much promise, and was popular where he was best known. Young as he was, at his death, he was colonel of a regiment of militia within the military district where he resided.

ELISHA P. CUTLER graduated at Williamstown College in 1802, pursued his legal studies in the office of Samuel Dana and William White Richardson, was admitted to the bar in 1805, and entered into practice at North-Yarmouth, where he continued until his death in August 1813. Mr. Cutler was a good lawyer, and had just begun to distinguish himself as an able advocate. There are several present who well remember some unequivocal proofs of this. Few gentlemen have entered into the practice with a fairer prospect of usefulness, and of eminence. And he was equally respected in private life. He was popular in the place of his residence, and represented his fellow townsmen in the legislature of Massachusetts in 1810 and 1811, and, I believe, one other year. Mr. Cutler was, in his principles, and in his deportment, firm, manly and independent. His integrity, outward circumstances had never shaken, and I believe it may be said they could have no power to shake it. He never sought popularity ; it sought him; and he died in full possession of the confidence, and the high esteem of all who knew him.

THOMAS HOPKINS jun. received his legal education in my office, except a few months, which he spent in the office of Judge Wilde, at Hallowell. He was admitted to the bar in Cumberland, at Nov.

term, 1805. He commenced practice in Bridgton, where he remained about a year, and then removed to Portland in ill health, which continued and increased until his death, December 8th, 1807. Cut off in the morning of his days, he had but little opportunity of shewing his professional qualifications or acquisitions. What he was, and what he promised to be, it should be the office of some other to declare. He was my brother.

HEZEKIAH FROST graduated at Yale College in 1802, and received his legal education in Connecticut. He was admitted to the bar in Cumberland, March 1807, where he continued in the practice until his death in 1827. Mr. Frost was a well educated lawyer; he was also a very interesting, and he exhibited some memorable proofs in the hearing of many present, that he was an eloquent advocate. His mind was highly cultivated, and a native genius enabled him to call forth its powers with much success. While he drew largely upon an inexhaustible fund of wit and humor, he never lost sight of the points of his case; nor failed to enlighten while he delighted—I had almost said, enchanted his audience by the sallies of his wit. Mr. Frost had a well disciplined mind. He was a profound mathematician, skilled in argumentation, and always understood the law of his case. What learning and talent could do, he rarely failed fully to accomplish. But his character was marked with some other and highly estimable traits. Many present love to dwell upon these happy reminiscences. No man had more of the milk of human kindness than our brother Frost; his integrity was unimpeached and unimpeachable; his principles and his opinions were fixed, settled and unwavering; and those who but knew him best, loved him most for the open, frank and active benevolence of his heart. For some years preceding his decease, sickness and infirmity deprived the community of many valuable services he could otherwise have rendered.[1]

[1] Mr. Frost was admitted to the practice in Connecticut before his admission here, and opened an office, for a short time, in Vermont; in what town, I could never learn. Mr. Frost was once asked the question, and answered, with his own peculiar humor and drollery, that he was unable to declare with certainty; all he knew about the matter was—that it was the next door to Vermont meeting-house; that he never saw a human being while he was there, unless at meeting, except the worthy family with whom he boarded; and that he thought it best to remove before his shoes were worn out. I would preserve an anecdote of Mr. Frost, because it is characteristic. A man well known to many of the bar as absolutely lawless, and utterly regardless of consequences to his

WILLIAM BARROWS was born in Hebron, in Oxford county, Oct. 1784, graduated at Dartmouth College in the class of 1806, with the highest honors. He took charge of the Hebron Academy, and continued for several years to instruct as principal in that institution, with much ability, and a high reputation. After leaving the academy he pursued his legal studies in the office of Samuel A. Bradley, at Fryburg, and was admitted to the practice of law in Oxford county; and to the bar of the Supreme Judicial Court in Cumberland, May 1814. He settled in North-Yarmouth in 1813, where he remained until his death in November 1821. Mr. Barrows was a well educated lawyer, and had begun to distinguish himself as an advocate, when his early and much lamented death disappointed the high expectations of his friends, and the community. Mr. Barrows possessed a solid understanding, and a cultivated literary taste; and was highly esteemed for his sound principles, and uncompromising integrity, for the suavity of his manners, the benevolence of his heart, and his unaffected, unostentatious piety.

ALFRED METCALF graduated at Providence, and pursued his legal studies in the office of Fisher Ames at Dedham, Mass. He was admitted to practice in 1804 in Massachusetts, and settled in Portland about 1806, where he continued until 1812, when on account of his declining health, he removed to Bardstown, in Kentucky. Two or three years after he settled there, he was appointed a Judge of the Court of Common Pleas, and held that office with distinguished rep-

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reputation while he always managed his affairs in such a way that his property was never in danger, had often applied to Mr. Frost, and stated perplexities in which his iniquities involved him. He once stated a case where he had committed an open and wanton trespass upon the land of another. Frost told him that his were the most difficult causes he had met with, for he could never find any law to suit them. Do try Esquire Frost, said the fellow, for once, and help me out of this case—look and see if you can find any law for me, and I will call again. He did call again, and Mr. Frost told him there was no law in the books to suit his case, and he had better compromise as well as he could with his adversary. Have you looked into all the books for me Esquire, asked the fellow. There is one said Mr. Frost, the bible, which declares that God made all the productions of the earth for the use of man—and we do not read that he pointed out any individual. You seem to have taken the ground that therefore all mankind are tenants in common, and as no partition has ever been made with your knowledge or consent that you, as a tenant in common, have as good a right to any of the gifts of providence as any other—and I can find in my other books, that one tenant in common cannot sue another for a trespass. Now unless you can get along in this way, I think you have no remedy; but you must go to a more experienced lawyer to conduct your defence.

utation about two years, when his still declining health compelled him to resign it, and he removed to Alabama, but his disease (consumption) was too deeply fixed, and he died about two years after, very much lamented by all who knew him. Mr. Metcalf was an excellent scholar, and a well read lawyer, and gave the promise of much usefulness and of eminence in his profession. He was my partner about three years, and I feel myself warranted in saying, that he was more than all this, he was a man of inflexible integrity, of unwavering, uncompromising principles, and an open, frank and generous disposition ; he was ardent and sincere in his friendships, and possessed a heart susceptible of every generous and noble impression,—wherever he was known, he was beloved,—and most beloved where he was best known.

Bennet Pike had his legal education in the office of John Burnham, in Limerick, county of York, and was admitted to practice in York county (I believe) in 1819. He was admitted as an attorney in the Supreme Judicial Court in this county, November term 1821. He commenced the practice at Bridgton, and continued there until his death in 1827. Mr. Pike's professional reputation was very respectable ; he had begun to distinguish himself as an advocate, and warranted an expectation of future eminence. His practice at the bar was liberal, fair and honorable. And in private life he was much respected. His early death was deeply lamented by his acquaintances and friends, and extensively felt as a loss to the community.

Robert Orr pursued his legal studies in the office of Benjamin Orr, his brother, at Topsham, in Lincoln, and was admitted to the bar in this county in October 1823. Mr. Orr afforded another instance in which the promise of much usefulness and eminence has been disappointed by an early death. He died in 1828, much lamented, and held in high estimation for his professional acquirements, and his private worth.

There are a few other deceased members of the bar, some of whom were admitted in Cumberland, and others practiced here for a short time only, of whom a brief notice may be expected.

James C. Jewett, born in Portland, graduated at Harvard College in 1800, pursued his legal studies in the office of Salmon Chase, and was admitted in Cumberland in 1804 ; but he never entered into the practice.

FOSTER WATERMAN, a member of the Suffolk bar, who graduated at Harvard College in 1789, and had also received a theological education, came into this county, and practiced law here a few years. He was a man of learning and genius. But his practice was not extensive. Mr. Waterman devoted much of his time to other pursuits, and removed from the county, so that we can scarcely consider him as belonging to the Cumberland bar.

DANIEL WALDO LINCOLN graduated at Harvard College in 1803, pursued his legal studies in Massachusetts, where he was admitted to the bar. He resided in Portland a few years, after which he removed to Boston, where he continued in the practice several years until his death.

NATHANIEL HOWE entered into the practice of law at Paris, in Oxford county about twenty-five years ago, and continued there a few years—when he removed to Waterford, in the same county; and afterwards to Bridgton, in this county, where he was much respected as a lawyer, and as a man. He removed back to Waterford some years before his death; so that although he was sometimes attending our courts, he must be considered as properly belonging to the Oxford bar. I have not been able to learn where he studied law, or when he was admitted to the practice. He was admitted a counsellor at the Supreme Judicial Court at Portland, May 1812.

TRISTRAM GILMAN graduated at Dartmouth College in 1800, pursued the study of law in the office of Dudley Hubbard, at Berwick, in the county of York, where he was admitted to the bar, about 1812. He was admitted to practice in the Supreme Judicial Court in this county May 1814, and admitted as counsellor in May 1816. Mr. Gilman commenced practice at Berwick, afterwards removed to Wells, and then to North-Yarmouth, and after a short time he returned to Wells; so that he more properly belongs to the York bar. Mr. Gilman died in 1829.

ENOCH LINCOLN, late governor of Maine, although a few times at the bar in Cumberland, must be considered as a member of the Oxford bar.

DANIEL CLARK graduated at Bowdoin College in 1821, and was admitted to practice in the Court of Common Pleas in Cumberland, March 1825, by virtue of a resolve of the legislature. He died soon after his admission.

Ezra B. Pike graduated at Bowdoin College in 1829, pursued his legal studies in the office of Stephen Longfellow—and was admitted to the bar in this county June 1832. He was a young man of much promise, cut off by death a few weeks after his admission.

Henry Putnam graduated at Harvard College in 1802, and pursued his legal studies in Massachusetts. He was admitted to the bar about 1807, and settled in Brunswick, and continued in practice there a considerable time ; but much of his life was devoted to other pursuits, and he removed again into Massachusetts where he died several years ago.

Gentlemen, I have closed my brief notices of those, who have quitted mortality, and left us behind them. I am aware it may be said that, in my short sketches of character, I have not mentioned a single fault in our deceased brethren, and that it is impossible, among so many of the erring race of man, as have passed in review before us, that there should not be found at least a few, who had some fault of character, of which a strict regard to truth and impartiality required that some notice should be taken.

Let all this be supposed, let it be supposed also (if the supposition be necessary) that there are as many in proportion as would be found in an equal number of some other class of citizens, of whom impartial truth would authorize some expression of disapprobation ; or a *qualified* approbation at least ;—but is this the place, or this the time for such an exercise of memory ? Let us tread lightly over the ashes of the dead. Let us remember too that it might be more profitable for the survivors to look into our own characters, and our own hearts, and search out the faults which may lie hidden there, than to recall the errors of those, who have met the ~~requisitions~~ of eternity. I readily admit that the maxim *de mortuis nil nisi bonum* has its proper limitation ; and that it can never justify or even excuse unmerited eulogy. But have I trespassed within these limits ?—I cannot accuse myself of having bestowed the meed of praise where it is not due ; nor of exceeding that which is due ; nay, I have fallen short of that in some instances, where it would require more ability than I may claim to render even strict justice. ~~The memory of~~ those who have been instrumental of much public good should be held in grateful re-

membrance, and if, haply, some fault or error may be discovered in a few of our departed brethren, let the mantle of charity be cast over it.

Among the members of the bar practising in the county of York, before it was divided into York, Cumberland and Lincoln, and among those who practiced, and those who were admitted in Cumberland, we may enumerate one governor of Massachusetts, one President of New-Hampshire, and a governor of Maine ; three members of the United States Senate, and nine members of its House of Representatives ; one Chief Justice and one Associate Justice of the Superior Court of New-Hampshire, and one Attorney General of that State ; three Chief Justices and five Associate Justices of the Supreme Judicial Court of Massachusetts ; one Attorney General and one Solicitor General of that State ; one Associate Justice of the Supreme Court of the United States, and three Judges of the United States' District Court for Maine ; one Chief Justice of Vermont ; five United States' Attorneys for the District of Maine ; one Marshal of Maine ; one Chief Justice and three Associate Justices of the Supreme Judicial Court of Maine ; three Presidents of the Senate of Maine ; one Judge of the Admiralty Court of Maine under the confederation ; three members of the convention which accepted the Constitution of the United States, and a Vice-President of that Convention ; three members of the Provincial Congress ; three Judges of Probate in Maine and one in Massachusetts ; several members of the convention for forming the Constitutions of Massachusetts, of New-Hampshire and of Maine ; and numerous members of the State Legislatures of Massachusetts and of Maine, as well of their Senates as of their Houses of Representatives. One envoy extraordinary and minister plenipotentiary to a foreign court, besides many other appointments to public offices of important authority and trust. This list which might be much farther extended by enumeration, abundantly proves, that notwithstanding the illiberal prejudices of many against lawyers, the most important offices of public trust and confidence have generally been bestowed upon learned and eminent members of the profession, and that the public expectations from them have been very rarely disappointed.

Brethren, invaluable benefits to the community, which may extend to the remotest generations, have resulted from an able discharge of duty by our predecessors. Let us not be unmindful of ours. Much

depends upon the exertions of the bar, in every age, to prevent the re-introduction of former errors, and the introduction of new ones. Ignorance must ever be productive of error, and if it is suffered to triumph over learning, who can calculate the mischiefs which may very soon result from such a domination. Unless we guard against such a calamity, the benefits derived from those who have gone before us, may, in a great measure be lost ;—our successors might follow the dangerous example ; and a few such negligent generations might possibly restore the former condition of barbarism. But posterity must not be suffered to accuse us of neglecting the duties we owe to ourselves and to them.

Let us then persevere,—the march is onward—and there should be no halting ; for to halt is not to stand still, but to retrograde. Let us satisfy the world too that we do not abuse the influence we may possess ;—let them see that honorable members of our profession disdain, for a pecuniary, or for any consideration, knowingly to misuse their learning, and prostitute their talents to promote fraud, injustice or oppression. The best of human institutions may be made better ; and our present excellent system of jurisprudence may, perhaps, yet experience important improvements ; and if we continue as faithful to our duties as our predecessors have been to theirs, it will be continually progressing, and advancing to the highest state of perfection, which the lot of humanity can admit. Even our enemies will be at peace with us ;—and the whole community will know that our judicial courts are a terror to evil doers, and a praise to those who do well ;—even transgressors, while they fear, will be constrained to regard them with respect and veneration ;—and all will be convinced that our judges dispense justice and the law unawed—unmoved—by the fear or the favor of man ;—their constant maxim—FIAT JUSTITIA RUAT CŒLUM.

APPENDIX.

I have been requested by many to publish the remainder of my extracts from the ancient records, and some ancient papers in my possession, in an appendix; but the address occupies so many pages, that I have at length concluded not to do it. I merely add the copy of an ancient writ of execution, and a list of the members of our bar.

26 : 13 : 00
05 : 10 : 00
19 : 08 : 00
51 : 11 : 00

To the Marshall of the County of Yorke or his Deputy: In his Majesty's name you are required to leavy of the goods, cattle or chattels, and for want y'roff, the body of Joseph Poewell, to the valew of fivety-one pounds, seaven shillings and 6d., and three shillings 6d. for ye execution, w'rof twenty-six pounds thirteen shillings is to bee payd in current New-England Money, five pounds tenn shillings in Merchantable fish at price current, and nineteen pounds 8s. to bee payd in Merchantable whitte oake pipe staves, to bee delivered at Mr. John Cutt his wharff according to ye bond, at ye same price as then the sd Mr. Cutt received pipe staves wn these were by obligation due: to bee payd to satisfy Major Nicho. Shapleigh for a judgmt of Court granted him at a County Court, holden at Wells July 7, 1674. W'rof fayle you not to make a true return vndr your hands. Dated this: 17: July 1674.

Per Curia: Edw: Rishworth, ReCor.

LIST OF MEMBERS OF THE BAR.

Practising in the county of York before and in 1760.

*Thomas Gorges, 1640.
*Noah Emery, about 1725.
*Caleb Emery about 1750.
*Daniel Farnum, " "
*Matthew Livermore "
*Samuel Livermore, about 1760.
*John Sullivan, " "
*David Sewall, " "

Practising in the county of Cumberland in 1760.

*Daniel Farnum,
*Matthew Livermore,
*William Cushing,
*Joseph Stockbridge,
*David Sewall,
*John Chipman,
*Samuel Livermore,

Persons admitted to the bar in Cumberland, or practising in that county since 1760.

*Theophilus Bradbury, May 1761.
*David Wyer, Oct. 1762.
*James Sullivan, 1768.
*Theophilus Parsons, July 1774.
*John Frothingham, March 1779.
Daniel Davis, about 1782.
*George Thacher about 1780.
*Dudley Hubbard, Oct. 1789.
*Samuel C. Johonnot "
*Salmon Chase, "
*William Symmes, Oct. 1788.
Prentiss Mellen, (C. J. of Maine)1789,
*Joseph Thomas, May 1792.
*John Bagley, jr. April 1794.
James D. Hopkins, March 1797.
Peter O. Alden, "
Edward Little, 1798,

*John Park Little, 1799.
Nicholas Emery, "
Ezek. Whitman, (C. J. of Com. Pleas Maine,) 1799.
†Dudley Todd, 1799.
*Benj. Orr, in Lincoln, 1801.
Stephen Longfellow jr. 1802.
‡Barret Potter, 1802.
‡Joseph Pope, "
†Daniel Howard, "
*Nathan Kinsman, 1803.
‡Horatio Southgate, 1803.
*James C. Jewett, 1804.
*Alfred Metcalf, "
*Oliver Bray, "
*Peter Thacher, "
*Daniel W. Lincoln, 1805.
*Samuel Whitmore jr. "
Woodbury Storer jr. "
*Elisha P. Cutler, "
Nathan Weston jr. (Just. of S. J. C. of Maine,) 1805.
*Thomas Hopkins jr. 1805.
Wm. B. Sewall, "
‡S. A. Bradley, "
†Simon Greenleaf, 1806.
‡Wm. Freeman, "
†Isaac Gates, "
†Stephen Chase, Nov. 1806.
*Henry Putnam, 1807.
Josiah W. Mitchel, March 1807.
*Hezekiah Frost, "
John M. O'Brian, 1808.
†John Wadsworth, March 1808.
†Jeremiah Perley, 1808.
Joseph Adams, June 1808.
Moses Quinby, 1808.
Jacob S. Smith, Nov. 1808.
Samuel Fessenden, 1809.
Ebenezer Everett, about 1809.
Wm. Pitt Preble, about 1809, (late Asso. Just. of S. J. C.)
†Joseph D. Learned, March 1811.
Levi Whitman, Nov. 1811.
Cha. S. Daveis, 1810.
Albion K. Parris (Just. of S.J.C.)1810.
*Nathaniel How about 1808.
‡John Mussey jr. Nov. 1812.
Wm. Bradbury jr. "
‡Luther Fitch, 1811.
*William Barrows 1812.
David Stanwood, "
*Tristram Gilman, "
†Henry Farwell, 1812.
Charles Whitman, Nov. 1814.
Jacob Hill, 1813.
†Peter C. Virgin, 1813.
‡John P. Boyd, Nov. 1815.
†Nath'l Deering, "
‡Charles Freeman "
†Edward Andrews, 1814,
William Bradbury, "
*Enoch Lincoln, "
John Anderson, Nov. 1816.
Tho. A. Deblois, "
†Bellamy Storer, March 1817.
†John W. Mellen, June 1817.
‡Wm. T. Vaughan, 1816.
Sam. F. Brown, "
Humphrey W. Eaton, Nov. 1818.
†Peleg Chandler, June 1817.
Ashur Ware, 1817, (Judge of District C. U. S.)
†Luther Richardson, June 1819.
George Jewett, Nov. 1819.
John Eveleth, "
†Stephen L. Lewis, "
‡Samuel Warren, May 1820.
Robert P. Dunlap 1818.
Nathan Cummings, Nov. 1820.
William Willis, 1817.
Grenville Mellen, June 1821.
Josiah Pierce jun. "
†James P. Vance, "
*Bennet Pike, 1819.
Randolph A. L. Codman, Dec. 1821.
*Charles Cleland, 1821.
Josiah Little, March 1822.
Jarius S. Keith, Dec. 1822.
†Elijah L. Hamlin, "
John L. Megquire, Oct. 1823.
William Boyd, "
*Robert Orr, "
Andrew L. Emerson, March 1824.
David Hayes, 1824.
*Daniel Clark, (by resolve) Mar. 1825.
Giles S. Hawes, " "
Albert L. Kelley, June 1825.
Cha. E. Barret, Oct. "
Jabez C. Woodman, "
Phillip Eastman, 1823.
Francis O. J. Smith, March 1826.
Charles P. Chandler, June 1826.
Wm. T. Smith, Oct. "
Charles Packard, 1824.
Wm. P. Fessenden, Oct. 1827.
John Neal, 1827, previously admitted in Maryland.
Stephen Longfellow jun. Oct. 1828.
‡Frederick Mellen, "
Patrick H. Greenleaf, "
John D. Kinsman, "
Osgood Bradbury, 1827.
Wm. Paine, Nov. 1829.

Wm. A. Walker, 1829.
Cha. Washburn, 1828.
Ebm. G. Rawson, June 1830.
Roscoe G. Greene, Oct. "
Josiah S. Little, 1828.
†Samuel Moody, "
Wm. H. Codman, Mar. 1831.
Edward T. Little, June 1831.
John H. Hilliard, 1831.
James B. Cleaveland, 1831.
James Brooks, Oct. 1831.
Samuel Swasey, March 1832.
Augustine Haines,
Nath'l S. Littlefield, 1830.
*Ezra B. Pike, June 1832.
Horatio S. Swasey, Oct. 1832.
Tho. R. Rawson, "
James F. Otis, "
Seth Paine, (by resolve) "
John F. Hartley, March 1833.

**Deceased.*

†*Removed from the county.*

‡*Retired from the practice.*

☞ *Where the month is not mentioned, and where the time is expressed with uncertainty the admission to practice in the Court of Common Pleas, was not in this county.*